



POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to:
 - Issue lookouts in order to provide reliable and timely intelligence on threats and support informed CBSA decision-making on the entry to Canada of persons, goods, conveyances and on exports, as well as to support investigations and enforcement decisions, and additionally, to support Citizenship and Immigration Canada (CIC) decision-making on visa issuance and on status applications;
 - Create lookouts that are relevant to the CBSA's jurisdiction;
 - Disseminate alerts to field officers to bring to their attention more immediate threats;
 - Manage lookout information in accordance with the *Privacy Act*, relevant legislation, and CBSA policies on information sharing; and
 - Ensure the integrity of the information contained in the lookouts by putting into place categories that identify where the lookout originates, implementing new requirements for issuing, maintaining, reporting and closing, and implementing new review periods.

AUTHORITY

2. The authority to issue lookouts, cautions and alerts is derived from the CBSA's mandate to provide integrated border services that support national security and public safety priorities and facilitate the free flow of persons and goods, including food, plants and animals, which meet all the requirements under its program legislation.

PURPOSE AND SCOPE

3. The purpose of this policy is to set out the key requirements, under which CBSA lookouts are issued, maintained and closed.
4. This policy applies to all CBSA employees who issue, assess or use lookouts.
5. CIC recognizes that this policy applies to those CIC Officers who are authorized to issue, assess or use lookouts. Therefore, references to "CBSA" in this policy shall also apply to CIC.

POLICY GUIDELINES

General

6. At POEs, BSOs shall refer lookouts for mandatory secondary examination.
7. Officers are responsible for carrying out any specific instructions that the lookout may convey and reporting the interception and its results immediately following the event or as soon as possible thereafter.



8. The CBSA is accountable for the information contained in lookouts. Therefore, resources within the Agency will, to the fullest extent possible, apply a lookout assessment process (see Lookout Standard Operating Procedures (SOPs) Appendix A) to incoming information prior to issuing a new lookout or when reviewing existing lookouts.
9. Lookouts are to be accessed by officers solely to support decision making under the relevant legislation. They are not to be accessed for any purpose falling outside their assigned duties, or with the intention of contravening any policy or instruction. Contraventions will result in the application of appropriate sanctions.
10. When a lookout reaches the end of its lifecycle and is archived, destruction of related sensitive documents must be in accordance with *CBSA's Information Management Policy* effective as of November 28, 2012. This does not preclude the investigating CBSA office from keeping original records relating to the lookout documents.

Lookout Descriptors

11. CBSA lookouts are to be identified by category, CBSA program legislation and type, indicating where a lookout originates, the governing legislation, the type of information, and the intelligence used in the creation of the lookout.
12. All lookouts, regardless of category shall be considered relevant, accurate, valid, and demand serious attention by officers.

Lifecycle of a Lookout

13. A CBSA lookout has a "lifecycle" consisting of issuance, maintenance, review, reporting and closing.
14. The procedures for issuance, maintenance reporting and closing will attest to the high standards applied by the CBSA to all lookouts, regardless of category or type.
15. Lookouts shall be reviewed shortly before or on the day the lookout is expected to expire and when the subject of the lookout is intercepted.
16. Lookouts may be extended if still required and/or may be modified if information needs to be added, changed or deleted.
17. When lookouts are no longer required, they should be closed, cancelled, expired, or archived. Access to cancelled, expired or archived lookouts, with the exception of the ACROSS, is restricted to enforcement and intelligence officers.

Lookout Validity and Review Periods

18. It is the policy of the CBSA that lookout information will be reassessed at regular intervals for reliability, accuracy and relevance.



19. The CBSA is appointed to administer and/or enforce various Acts of Parliament. The validity periods will vary from Act to Act. Appendix C of the SOPs outlines the range of lookout validity periods from seven days to ten years, depending on the type of lookout, the system in which it is input and the officer's judgement.
20. Review periods for lookouts are specified in Section 3 and Appendix C of the SOPs.

Attachment of Cautions to Lookouts

21. Lookouts with officer safety cautions must be referred to the regional office where the subject is most likely to be intercepted for validation, issuance and maintenance. However, in exigent circumstances, where interception is imminent and an intelligence officer cannot be reached in a timely manner, officers, may attach cautions to lookouts with the approval of their supervisor.
22. Responsible CBSA and CIC officers will carefully evaluate the accuracy of information supporting the need for the caution.

Armed and Dangerous Cautions

23. Lookouts with Armed and Dangerous (A&D) Cautions are issued by CBSA Intelligence Officers in consultation with the Border Operations Centre.
24. An "Armed and Dangerous" caution should only be issued where the sum of available information and intelligence provides reasonable grounds to believe that an individual is both armed and likely to use armed force if encountered.
25. In determining whether to issue an "Armed and Dangerous" caution versus another caution such as "Violent" or "Known to Carry a Weapon", both the subject's present situation and past history must be assessed.
26. A lookout containing an armed and dangerous safety caution will refer to one person only.

Issuance of Alerts

27. Alerts may be disseminated to any POE, independent of lookouts, in response to intelligence that indicates the approach of a more immediate threat, where there is insufficient time to prepare a lookout or where intelligence is insufficient to support the preparation of a lookout on a specific individual or shipment.
28. Alerts may be issued to Inland Enforcement Officers and / or CIC where appropriate, pertaining to individuals or threats inside Canada.
29. Alerts may be issued to overseas offices, where appropriate, pertaining to individuals or threats outside Canada.



Dispute Resolution

30. In any case where there is a dispute regarding the issuance or review of a lookout with an officer safety caution, that lookout shall be issued or maintained with the higher level of officer safety caution sought, pending a full review of the case according to the dispute resolution mechanism described in Section 7 of the CBSA Lookout SOPs.

Disclosure of Information

31. Lookout or alert information is not to be shared with any person or organization except as provided for under the *Privacy Act*, Section 107 of the *Customs Act*, D1-16(2), or the information sharing provisions such as the *Statement of Mutual Understanding on Information Sharing* (among CIC, the United States [US] Immigration and Naturalization Service, and the US Department of State) and the *Memorandum of Understanding on API/PNR Sharing*. Officers may also be guided by the provisions of CIC's Information Sharing Manual (IN1 and IN2).

Official Languages

32. All officers issuing or maintaining lookouts shall adhere to the requirements of the *Official Languages Act* in determining the language requirements for lookouts.

Roles and Responsibilities

33. Appendix F of the CBSA Lookout SOPs set out the roles and responsibilities of the CBSA and CIC officers and units involved in the lifecycle of lookouts.



APPENDIX - DEFINITIONS

An **“alert”** describes in general a set of indicators or identifiers that may lead an officer to refer a person, shipment or conveyance for examination. The alert is an additional means of making CBSA officers aware that the individual named in a lookout now poses a more immediate threat or that an expected but unidentified arrival (person of vehicle / goods) poses an immediate or relatively short term threat. An alert indicates imminence, i.e., the threat is expected to occur very soon.

To **“archive”** a lookout in the Integrated Customs Enforcement System (ICES) is to move it from expired status to archived status through a system-generated process that places the lookout within the databank library.

To **“audit”** is to implement a performance measurement regime that will ensure that the lookout system is properly evaluated and that the quality of CBSA lookouts as intelligence products is rigorously maintained.

“Border Services Officers” are officers serving at Canadian ports of entry with customs, Canadian Food Inspection Agency (CFIA) and immigration responsibilities.

To **“close”** a lookout is to “expire” a lookout in ICES and to “delete” a lookout in the Field Operational Support System (FOSS).

To **“cancel”** a lookout in ICES is to remove it from the system and to remove relating records and audit or tracking information for that lookout. It is recommended the “cancel” option only be used in ICES when the lookout is incorrect.

A **“caution”** is a short description, attached to a lookout or alert, that brings to the attention of CBSA officers, wherever located, that the individual named in the lookout or alert possesses certain characteristics of special note, or poses potential danger and/or known threat. The BSO is then able to take appropriate measures, at times preventative, as defined in procedures, operational memoranda, or other instructions.

“CIC Officers” for the purposes of the lookout procedures are officers of Citizenship and Immigration Canada serving in Canada or abroad.

To **“delete”** a lookout in FOSS is to remove it from the system of record. The information is maintained in the data warehouse. Note that to “delete” a lookout in FOSS is to “close” it under these procedures.

A lookout is **“expired”** in ICES when it is removed from active use and put it into “expired” status because it is no longer valid. If the lookout no longer needs to be active, expiry can be carried out manually. If the lookout has not been extended before the expiry date then it will automatically expire. Expiring a lookout that is no longer required retains the information in the ICES system. It is recommended that wherever possible the lookouts in ICES should be “expired” rather than cancelled. Note that to “expire” a lookout in ICES is to “close” it under these procedures.



To “**extend**” a lookout is to assign an additional validity period and then keep it in active use because the lookout is still valid.

“**Information**” is defined as raw data, an untested statement or unconfirmed report.

“**Intelligence**” is information collected, evaluated and analysed by way of the intelligence process to produce assessments of events, trends and probability of future activities.

An “**interception**” is an encounter between CBSA officers and the entity (i.e., individual, goods, animal plant, food, resource) or conveyance named within a lookout.

A “**lookout**” is a specific intelligence product developed to identify a person, corporation, conveyance or shipment that, according to various risk indicators or other available intelligence, may pose a threat to the health, safety, security, economy, or environment of Canada and Canadians.

- A lookout takes the form of an electronic file record within the ICES, FOSS, or the Accelerated Commercial Release Operations Support System (ACROSS). The lookout will “flag” or identify particular individuals, including corporations, and specific goods, conveyances or shipments. This “flag”, in turn, is intended to prompt a closer examination of circumstances. In order for a primary officer to become aware that a lookout exists, and in so doing become aware that the individual, conveyance or goods of interest have arrived, he or she must query the subject in IPIL. Officers within Canada and at ports of entry can query FOSS lookouts or input new FOSS lookouts directly. Officers working overseas as Liaison Officers (LOs) can access existing FOSS lookouts via a linkage with GCMS. Note that while similarities exist, targets are not synonymous with lookouts. The process of targeting is a step removed from the intelligence process. Targeters are provided with indicators that are the products of the intelligence process and then make use of these indicators to create targets.

A “**record of interception**” is a system record in the ICES, FOSS or Global Case Management System (GCMS) reporting on an interception and/or an enforcement action taken by CBSA officers.

Information contained in this record may include the reason for referral or examination, or other contact, the results of the search (if applicable), interview notes, tombstone data, the action taken, the results of the encounter and the identity of any travelling companions or associates.

To “**review**” a lookout is to examine the threat assessment process that led to the lookout’s issuance, with the aim of judging the validity of the lookout in the light of new information. The review will lead to the lookout being extended, modified, expired or cancelled.

CBSA ENFORCEMENT MANUAL

Part 1

INTRODUCTION

Chapter 1

INTRODUCTION TO CBSA ENFORCEMENT

30-04-2009

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INTRODUCTION

1. Detection and prevention of border-related offences such as smuggling, fraud or wilful non-compliance with immigration, trade and tax laws depends on the knowledge and commitment of the Canada Border Service Agency's (CBSA) workforce. They ensure the success of our enforcement program by applying their training, good judgment, skills and tools in a fair and responsible manner.

PURPOSE

2. The CBSA Enforcement Manual is intended as a support and guide for CBSA officers in the execution of their enforcement related responsibilities
3. This when complete, will entirely replace the Customs Enforcement Manual published in 1993 and all of its' subsequent amendments and bulletins.
4. The CBSA Enforcement Manual provides clearly defined boundaries through comprehensive policy statements. The manual also provides methods for achieving optimal results through logical procedural steps.
5. Where applicable, references to related sources of information are also provided.
6. The manual is divided into parts to reflect CBSA policy and procedures relating to enforcement priorities, selection, examinations, sanctions, systems and prosecutions.

PRIORITIES BASED ON RISK MANAGEMENT

7. Risk management is a systematic method of identifying, evaluating, analyzing, and controlling potential adverse events and consequences. Effective risk management decisions must reflect a balance between social and economic benefits and the costs associated with control activities.
8. Successful risk management takes four factors into account:
 - the potential existence of non-compliance;
 - the magnitude of the non-compliance;
 - the damage that non-compliance will cause; and
 - our ability to deal with the non-compliance.

9. Included in the cases of non-compliance routinely detected by officers are goods ranging from relatively low value general merchandise to large shipments of illicit drugs that would have a significant impact on the social and economic welfare of the country. In order to make effective use of our enforcement resources, the focus of our enforcement activity is directed at prohibited goods (i.e. narcotics, pornography, weapons), counter-terrorism, export control, commercial fraud, and other identified areas of high risk.

ENFORCEMENT ACTIONS

10. CBSA enforcement is supported by a sanctions regime that imposes penalties in proportion to the type, frequency, and severity of the infraction. Also, non-compliance has a negative impact on traveller and trader performance records, and results in the withdrawal of previously designated privileges and increased targeting for examinations. Cases of criminal activity, such as fraud and smuggling, are subject to seizure and criminal prosecution.
11. As well as stopping the criminal offences involved in the cross-border movement of contraband and inadmissible people, we have designated officers with added powers to arrest and detain individuals who have outstanding arrest warrants or who are suspected of *Criminal Code* offences such as impaired driving or abduction.

ENFORCEMENT OBJECTIVES

12. CBSA enforcement objectives are a key element of our enforcement strategy. Listed below are those objectives:
 - a) detection and correction of violations as quickly as possible and in the least intrusive manner in light of the applicable law. Correction includes the collection of monies owing. Persons should not realize economic gain by non-compliance;
 - b) deterrence of future violations by the same party or by other parties;
 - c) equitable treatment of the regulated community through a uniform approach to enforcement responses; that is, similar cases are treated in a similar way;
 - d) punishment of serious wilful wrongdoing by imposition of criminal sanctions;
 - e) effective use of enforcement resources using the least resource-intensive response that permits compliance goals to be achieved; and

- f) International co-operation, co-ordination, and liaison to contribute to the international effort to minimize fraud, smuggling, and international trafficking in narcotics and other illicit substances.

CUSTOMS OPERATING PRINCIPLES ON ENFORCEMENT (COPE)

- 13. All personnel involved in enforcement activities must adhere to the guiding principles of the Customs Operating Principles on Enforcement (COPE).

Note: See Appendix A for a full copy of the COPE document.

- 14. The COPE document contains national guidelines, developed, monitored and maintained by the Enforcement Branch. They are designed to eliminate any duplication of effort and potential for confusion by firmly establishing, on a national level, the roles and responsibilities of the parties directly involved in the enforcement program. These include the regional enforcement organizations (Intelligence and Criminal Investigations) and the regional border operations. For example, officers requiring functional guidance regarding the seizure or detention of goods or people are to contact their regional enforcement organization, as this is one of their roles as outlined in the COPE document.
- 15. As part of its' stated purpose, the national COPE document requires each region, in consultation with the Enforcement Branch, to develop a regional document to further expand and specifically clarify how the actual enforcement responsibilities are to be shared between regional enforcement organizations and border operations. This regional document is referred to as the Regional Operational Practices on Enforcement (ROPE).

CBSA ENFORCEMENT MANUAL

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Chapter 1

INTRODUCTION TO CBSA ENFORCEMENT

Appendix A

CUSTOMS OPERATING PRINCIPLES ON ENFORCEMENT (COPE)

INTRODUCTION

1. Customs Operating Principles on Enforcement (COPE) is a national guideline intended to protect the integrity and consistency of the enforcement mandate. It clearly outlines the expectations, roles, and responsibilities of all parties directly involved in the enforcement program. It also serves to communicate the importance of enforcement and eliminate any duplication of effort and potential for confusion.
2. The document focuses on establishing an environment where all parties, through understanding and co-operation, will collectively contribute to the achievement of our enforcement objectives.

PURPOSE

3. To provide a national standard of enforcement roles and responsibilities for regional enforcement organizations and border operations by:
 - a) acknowledging that border managers maintain primary responsibility for program delivery relating to all enforcement activities within their districts;
 - b) identifying roles and responsibilities of regional organizations and border operations relating to enforcement;
 - c) providing the standard that all regions will utilize in their development of enforcement plans and structures; and
 - d) promoting the development of a document called the Regional Operational Practices on Enforcement (ROPE) that will outline the Regions adaptation of national standards.

ROLES AND RESPONSIBILITIES

Regional Enforcement Organizations

Intelligence Division

4. Provide functional guidance to border operations in areas of enforcement related to intelligence interdiction activities.

Note: Specific areas of responsibility must be defined in the ROPE document.

5. Primary contact for all outside enforcement agencies in matters relating to intelligence activities and in particular to specific functions, exercises, operations, and targets.

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Note: Specific areas of responsibility should be defined in the ROPE document and relate to all outside agencies and related enforcement concerns.

6. Conduct CBSA enforcement activities in co-operation with other customs services or other government departments, and participate in joint forces operations with other enforcement agencies.
7. Administration and control of all intelligence programs within the region including analysis services and risk assessments.
8. Administration and control of the informant and source development programs.
9. Conduct surveillance operations as part of on-going active intelligence gathering activities.

Note: It is recognized that Managers of the Intelligence Division and the Criminal Investigations Division shall advise each other of on-going surveillance operations.

10. Co-ordinate and control special regional enforcement exercises relating to intelligence interdiction activities.

Note: District operations should be informed and consulted.

12. Provide briefings to ports of entry regarding the Intelligence organizations roles and responsibilities, methods of communication, and follow-up practices and procedures.
13. Identify future enforcement needs within the region. Proactively plan, develop, and implement initiatives to meet these needs.

Note: Enforcement initiatives should be developed in cooperation with the district when applicable.

14. Keep the Regional Director informed of all intelligence activities and advise on enforcement issues and needs pertaining to the region.
15. Ensure that regional communications methods are efficient and effective in providing current, up-to-date enforcement information such as the delivery of lookouts.
16. Develop, implement, and maintain target information and indicators for both traveller and commercial operations for the use of border operations in their enforcement programs.

17. Serve as regional liaison with the Enforcement Branch and border operations regarding the administration and maintenance of specialized enforcement tools, equipment, and systems, such as x-ray machines, trace-detection systems, ICES, PIRS, and CPIC.

Note: Ownership, maintenance responsibilities, and reporting relationships should be further defined in the ROPE document.

18. Participate in public awareness and information seminars relating to the CBSAs enforcement initiatives and programs.
19. Participate in regional media relations relating to enforcement.
20. Co-ordinate and assist in inter-district enforcement exercises and/or programs within the region.

Criminal Investigations Division

21. Provide functional guidance to border operations in areas of enforcement related to criminal investigations activities.

Note: Specific areas of responsibility must be defined in the ROPE document.

22. Primary contact for all outside enforcement agencies in matters relating to criminal investigations activities and in particular to specific functions, exercises, operations, and targets.

Note: Specific areas of responsibility should be defined in the ROPE document and relate to all outside agencies and related enforcement concerns.

23. Conduct CBSA enforcement activities in co-operation with other customs services or other government departments, and participate in joint forces operations with other enforcement agencies.
24. Administration and control of all criminal investigations programs within the region.
25. Conduct surveillance operations as part of on-going active criminal investigations activities.

Note: It is recognized that Managers of the Intelligence Division and the Criminal Investigations Division shall advise each other of on-going surveillance operations.

26. Co-ordinate and control special regional investigations exercises that have a high probability of prosecution with potential for national/ministerial attention.

Note: District operations should be informed and consulted.

28. Provide briefings to ports of entry regarding the Criminal Investigations organizations roles and responsibilities, methods of communication, and follow-up practices and procedures.

29. Identify future investigations needs within the region. Proactively plan, develop, and implement initiatives to meet these needs.

Note: Enforcement initiatives should be developed in cooperation with the district when applicable.

30. Keep the Regional Director General informed of all investigations activities and advise on enforcement issues and needs pertaining to the region.

31. Ensure that regional communications methods are efficient and effective in providing current, up-to-date investigations information.

32. Participate in regional media relations relating to investigations.

33. Co-ordinate and assist in inter-district investigations exercises and/or programs within the region.

Client Services

34. Provide functional guidance to border operations in AMPS related activities.

Note: Specific areas of responsibility must be defined in the ROPE document.

35. Primary contact for all outside enforcement agencies in matters relating to AMPS.

Note: Specific areas of responsibility should be defined in the ROPE document and relate to all outside agencies and related enforcement concerns.

36. Provide advice to border operations with a view to ensure that systems and procedures provide an effective and efficient overall enforcement capability.

37. In consultation with the districts, identify regional enforcement training needs. Communicate these requirements to the Enforcement Branch, Training,

Learning and Development Section and provide necessary resources to assist in the development and delivery of training.

Note: Specific areas of responsibility for co-ordination of training will be defined in the ROPE document.

Border Operations

38. Conduct enforcement activities, including drug interdiction, and traveller and commercial examination, at ports of entry.

Note: The regional enforcement organization may initiate and/or participate in enforcement exercises at ports of entry. The district and regional enforcement organizations must jointly agree to the exercise plans.

39. Border operations must contact the Intelligence Division in cases involving significant seizures of suspected drugs.
40. Border operations must contact the Intelligence Division and Criminal Investigations Division in all cases involving section 489(2) of the *Criminal Code*.
41. Border operations must contact the Investigations Division in situations involving a potential prosecution under the *Customs Act* except in cases involving drinking and driving related offences, individuals subject to outstanding warrants, individuals in possession of property obtained by crime, and/or abduction/kidnapping offences.

Note: Specific procedures will be outlined in ROPE.

42. Conduct compliance verification of both travellers and commercial carriers employing established reporting procedures as well as those systems and procedures that permit specialized CBSA clearance practices such as telephone reporting, ships stores and spares regulations, CANPASS/EPPS, selective boarding, and other initiatives designed to facilitate traffic and volumes.
43. Conduct sampling exercises of travellers, carriers, and commercial importers in order to determine compliance rates.
44. Monitor compliance at ports of entry that are not staffed on a 24-hour basis.
45. Conduct CBSA enforcement activities at the port of entry in co-operation with other government departments or enforcement agencies.

Note: All enforcement exercises conducted with or on behalf of an outside enforcement agency must be coordinated through the appropriate regional enforcement organization as identified in the ROPE document. This does not include situations where police assistance is requested because of a threat to the security or personal safety of an officer in the line of duty, or when a traveller/carrier runs the port or leaves the confines of a port of entry without authorization.

46. Monitor activities at areas such as marine terminals, bonded and sufferance warehouses and airport ramp areas.

Note: The regional enforcement organization will be responsible for surveillance conducted as part of an on-going investigation, intelligence, and/or interdiction operation.

47. Provide the Regional Intelligence Officer (RIO) with a copy of all “port” lookouts in a timely manner.
48. Identify the future enforcement needs of the border operation. Proactively plan, develop, and implement initiatives to meet these needs.

Note: Enforcement initiatives should be developed in cooperation with regional enforcement organizations.

49. Establish District enforcement priorities and set specific enforcement accountabilities for employees.
50. Keep the Regional Director General informed of all enforcement activities and advise of enforcement issues and needs pertaining to border operations.
51. In consultation with regional enforcement organizations, identify enforcement training needs and provide the appropriate regional organizations with a needs assessment.

Regional Operational Practices on Enforcement (ROPE)

52. Each region will develop a Regional Operational Practices on Enforcement (ROPE) document that supports the Customs Operating Principles on Enforcement (COPE) document. It will state in detail how the enforcement responsibilities are to be shared within that region.

Note: In developing this document, consultation must be held with the Enforcement Branch in order to preserve the integrity of the enforcement program

53. The ROPE serves two basic purposes:

- a) provide specific procedures; and
- b) allow for deviations from COPE.

54. Provide specific procedures regarding:

- a) joint enforcement efforts involving both the regional enforcement organization and border operations;
- b) identifying the work location and activities of enforcement teams within the district operation;
- c) establishing media relations guidelines regarding enforcement issues; and
- d) identifying regional responsibility centres for the implementation, coordination, monitoring, and/or delivery of national programs, enforcement systems, and training programs.

55. Authorize deviations from the national guidelines as set out in COPE to address specific regional issues and needs.

Note: Such deviations must be submitted to the Enforcement Branch for review and advice.

56. The development, maintenance and monitoring of the ROPE document is the responsibility of the Regional Director General.

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Chapter 1

INTRODUCTION TO CBSA ENFORCEMENT

Appendix B

CBSA Enforcement Manual Maintenance

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to document the enforcement policy related to the *Customs Act*, the *Immigration and Refugee Protection Act (IRPA)*, and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)* in the Enforcement Manual (EN Manual).

PURPOSE AND SCOPE

2. The purpose of the EN Manual is to provide the Border Service Officers (BSOs) with the most current and up to date enforcement policies and procedures. The purpose of this appendix is to explain how the EN Manual is maintained.

POLICY

3. The CBSA EN Manual is maintained and updated regularly to add new policy or to revise existing policy.
4. Each chapter of the EN Manual is the responsibility of one primary section within the Enforcement Branch. Other impacted sections may contribute information when appropriate.
5. There are three levels of policy change;
 - A. **High:** Major policy changes must be approved at the Director General level and communicated to the field by means of an Enforcement Bulletin before being incorporated into the EN Manual. As well, the Union must be consulted on all high impact policy changes.
 - B. **Medium:** Medium policy changes may be approved at the Director level. Consultations will be done accordingly.
 - C. **Low:** Minor clarifications, grammar, formatting or translation errors or updates to reflect new titles must be approved at the manager level.
6. The most current version of the EN Manual is available on the Intranet. In accordance with the government's sustainable development strategy, no hard copies will be made available.

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7. All questions must go through the immediate supervisor. If the question cannot be answered via the supervisor, or the regional program services office, please forward the question to the following designated email address which can be selected from the global address list:

[CBSA-ASFC EN Manual-Manuel de l'exécution](#)

OFFICE OF PRIMARY INTEREST (OPI) AND OFFICE OF COLLATERAL INTEREST (OCI) TABLE

8. The following table identifies the office of primary interest (OPI) for each chapter as well as the offices of collateral interest (OCI).

Part	Name of Chapter	OPI (Office of Primary Interest) (Section)	OCI (Office of Collateral Interest) (Section)
Part 1- Introduction	Introduction	Horizontal Policy and Planning (HPP)	
	Health and Safety	Horizontal Policy and Planning (HPP)	
Part 2 – Enforcement Priorities	Chapter 1 – Alcohol and Tobacco	Borders Enforcement Division (BED), Corporate Programs	Intelligence Directorate {Intelligence Development and field support Division}
	Chapter 2 – Currency and Monetary Instruments	BED - Enforcement and Corporate Programs	Intelligence Directorate (BID)
	Chapter 3 – Firearms and Weapons	BED	Criminal Investigations Division, Borders Intelligence Division
	Chapter 4 – Reserved		
	Chapter 5 – Jewellery and Watches	BED - Enforcement and Corporate Programs	
	Chapter 6 – Drugs and Precursor Chemicals	A) <u>BED</u> - Point of entry - related enforcement B) <u>OC&CI (Intel)</u>	

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Part	Name of Chapter	OPI (Office of Primary Interest) (Section)	OCI (Office of Collateral Interest) (Section)
		National/International strategies	
	Chapter 7 – Reserved		
	Chapter 8 – Obscenity and Hate Propaganda	Intelligence Directorate BID	Prohibited Importations Unit, Partnership Division, Admissibility Branch
	Chapter 9 – Reserved		
	Chapter 10 – Endangered Species – Cites	Intelligence Directorate BID	BED - Enforcement and Corporate Programs, Criminal Investigations Division
	Chapter 11 – Counter-Terrorism	Intelligence Directorate NSD/Counter Terrorism Section	BED - Enforcement and Corporate Programs
	Chapter 12 – Our Missing Children	BED - Enforcement and Corporate Programs	Intelligence Directorate
	Chapter 13 – Counter Proliferation Section	Intelligence Directorate NSD/Counter Proliferation Section	BED - Enforcement and Corporate Programs, Criminal Investigations Division, Intelligence Directorate (SEC)
	Chapter 14 – Child Pornography	BED - Enforcement and Corporate Programs	Prohibited Importations Unit, Partnership Division, Admissibility Branch, Criminal Investigations Division,

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Part	Name of Chapter	OPI (Office of Primary Interest) (Section)	OCI (Office of Collateral Interest) (Section)
			Intelligence Directorate BID
Part 3 – Selection	Chapter 1 – Targeting	BED - Enforcement and Corporate Programs	
	Chapter 2 – Targeting Obscenity and Hate Propaganda	BED - Enforcement and Corporate Programs	Prohibited Importations Unit, Partnership Division, Admissibility Branch
	Chapter 3 – Reporting, Questioning & Referral	BED - Enforcement and Corporate Programs	
	Chapter 4 - Roving	BED - Enforcement and Corporate Programs	
	Chapter 5 - API/PNR and PAXIS	BED - Enforcement and Corporate Programs	
	Chapter 6 - Surveillance	Intelligence Directorate BID	Criminal Investigations Division
Part 4 – Examination – Goods and Conveyances	Chapter 1 – Detection Equipment	BED - Enforcement and Corporate Programs	Intelligence Directorate
	Chapter 2 - Reserved		
	Chapter 3 – Personal Baggage, Goods, and Conveyances Examination	BED - Enforcement and Corporate Programs	Criminal Investigations Division (searching electronic media)
	Chapter 4 – Commercial Shipment Examination	BED - Enforcement and Corporate Programs	

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Part	Name of Chapter	OPI (Office of Primary Interest) (Section)	OCI (Office of Collateral Interest) (Section)
	Chapter 5 – Container Examination	BED - Enforcement and Corporate Programs	Intelligence Directorate (CSI)
	Chapter 6 – Aircraft Examination	BED - Enforcement and Corporate Programs	
	Chapter 7 - Reserved		
	Chapter 8 – Commercial Marine Vessel Exam	BED - Enforcement and Corporate Programs	
	Chapter 9 – Marine Pleasure Craft Examination	BED - Enforcement and Corporate Programs	
	Chapter 10 – Commercial Motor Vehicle Exam	BED - Enforcement and Corporate Programs	
	Chapter 11 – Rail Examination	BED - Enforcement and Corporate Programs	
	Chapter 12 – Postal Examination	BED - Enforcement and Corporate Programs	Intelligence Directorate BID
	Chapter 13 – Courier Examination	BED - Enforcement and Corporate Programs	

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**Introduction
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Part	Name of Chapter	OPI (Office of Primary Interest) (Section)	OCI (Office of Collateral Interest) (Section)
Part 5 – Enforcement Actions Goods, Documents, Evidence, and Conveyances	Chapter 1 – Commercial Seizures, Ascertained Forfeitures & Administrative Monetary Penalties	Horizontal Policy and Planning (HPP)	Criminal Investigations Division BED - Enforcement and Corporate Programs
	Chapter 2 – Travellers Seizure and Ascertained Forfeiture	Horizontal Policy and Planning (HPP)	Criminal Investigations Division BED - Enforcement and Corporate Programs
	Chapter 3 – Criminal Code-Seizure of Evidence and Goods	Criminal Investigations Division	BED - Enforcement and Corporate Programs
	Chapter 4 – Agriculture and Agri-food Administrative Monetary Penalty System	Horizontal Policy and Planning (HPP)	BED - Enforcement and Corporate Programs, Criminal Investigations Division
Part 6 – Searches and Enforcement Actions - Persons	Chapter 1 – Arrest and Detention	BED - Enforcement and Corporate Programs	Inland Enforcement Division, Criminal Investigations Division
	Chapter 2 – Care and Control of Persons in Custody	BED - Enforcement and Corporate Programs	IED – Inland Enforcement Division; Criminal Investigations Division

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Introduction
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Part	Name of Chapter	OPI (Office of Primary Interest) (Section)	OCI (Office of Collateral Interest) (Section)
	Chapter 3 – Arrest and Detention of Young Persons	BED - Enforcement and Corporate Programs	Criminal Investigations Division, Inland Enforcement Division
	Chapter 4 – Foreign Representatives	Intelligence Directorate BID and NSD	BED - Enforcement and Corporate Programs
	Chapter 5 – Use of Force	BED - Enforcement and Corporate Programs	Inland Enforcement Division, Intelligence Directorate Criminal Investigations Division
	Chapter 6 – Personal Search	BED - Enforcement and Corporate Programs	
	Chapter 7 – Criminal Code Offences	BED - Enforcement and Corporate Programs	Intelligence Directorate Criminal Investigations Division
	Chapter 8 – Transportation of Persons Under Arrest and Detention	Horizontal Policy and Planning (HPP) “Part 1 - Guiding Principles” only	Inland Enforcement Division, Criminal Investigations Division, Borders Intelligence Division (BID)
	Chapter 9 – Reserved		
	Chapter 10 – Reserved		

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Introduction
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Part	Name of Chapter	OPI (Office of Primary Interest) (Section)	OCI (Office of Collateral Interest) (Section)
Part 7 – Customs Enforcement Systems, Information, and Intelligence	Chapter 1 – Integrated Customs Enforcement System (ICES)	Interoperability	BED - Enforcement and Corporate Programs, Intelligence Directorate (BED/FPLS)
	Chapter 2 – Enforcement Library	Interoperability	BED - Enforcement and Corporate Programs, Intelligence Directorate (BED)
	Chapter 3 - Reserved		
	Chapter 4 – Reserved		
	Chapter 5 – Reserved		
	Chapter 6 – Reserved		
	Chapter 7 – Integrated Primary Inspection Line, Secondary Processing and Passage History	Interoperability	BED - Enforcement and Corporate Programs, Intelligence Directorate (BED/FPLS)
Part 8 – Documentation and Reports	Chapter 1 – Notebooks	BED - Enforcement and Corporate Programs	Inland Enforcement Division; Criminal Investigations Division
	Chapter 2-Enforcement Forms	Horizontal Policy and Planning (HPP)	BED - Enforcement and Corporate Programs
Part 9 – Investigations and Criminal Proceedings	Chapter 1 – Customs and Prosecutions Policy	Criminal Investigations Division	
	Chapter 2 – Customs Prosecutions Procedures	Criminal Investigations Division	

Part	Name of Chapter	OPI (Office of Primary Interest) (Section)	OCI (Office of Collateral Interest) (Section)
	Chapter 3 – Statements and Evidence	Criminal Investigations Division	BED - Enforcement and Corporate Programs
	Chapter 4 – Court	Criminal Investigations Division	BED - Enforcement and Corporate Programs
Part 10 – Reserved			
Part 11 – Glossary	Glossary	Horizontal Policy and Planning (HPP)	

ROLES AND RESPONSIBILITIES

Enforcement Branch – Horizontal Policy and Planning

9. Horizontal Planning and Policy Division (HPP) will:
- a) direct all questions or requests for changes to the OPI
 - b) receive the chapter with approved changes from the OPI;
 - c) maintain quality control;
 - d) obtain translation of changes;
 - e) correct grammar, translation and formatting errors;
 - f) advise the Regional Directors of Program Services of approved changes and request that they advise us if there are any major concerns;
 - g) liaise with the Enforcement Branch intranet web development team; and
 - h) act as the OPI for the introduction, the glossary, the chapters on forms and the chapters on seizure policy.

Borders Enforcement Division

10. The Borders Enforcement Division (BED) is responsible for the content of EN Manual chapters on border enforcement policy and procedures.
11. The content of the chapters is the responsibility of one or more of the managers of the Air and Highway section, the Marine, Rail, and Postal section, the Fumigant section, the Detection Technology section, or the CBRN section of BED.
12. Recommendations for changes to the EN Manual chapters may come from another HQ area, a region, or may be initiated by a manager.
13. When a change recommendation comes from HPP it will be directed through the Enforcement and Corporate Programs section who will download and forward the chapter with the requested changes to the appropriate manager.
14. The manager will make and identify the changes, using highlighting, the track change tool, or sidebar.
15. The manager will consult with the OCI and the appropriate HQ areas and resolve any outstanding issues.
16. Once the changes have been finalized, the manager will forward the chapter to the Enforcement and Corporate Programs along with a list of those who were consulted.
17. The Enforcement and Corporate Programs section will manage the approval process.
18. The Enforcement and Corporate Programs section will side bar the changed paragraphs and prepare a synopsis of the change for readers.
19. The Enforcement and Corporate Programs section will forward the changed and updated chapter/document, the synopsis, and the list of those who were consulted to HPP.

Criminal Investigations Division

20. The Criminal Investigations Division is responsible for the content of EN Manual chapters on investigation policy and investigation procedures.
21. A manager in the Criminal Investigations Division will:

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- a) make changes to the chapter and identify the changes;
- b) consult with appropriate HQ areas and settle any outstanding issues;
- c) sidebar the changes and provide a sentence to explain what was changed;
- d) ensure the changes have been approved at the proper level; and
- e) forward the amended chapter, explanatory sentence and the list of those consulted to HPP.

Intelligence Division

22. The Intelligence Division is responsible for contents of EN Manual Chapters on intelligence policy and procedures.

23. Managers in the Intelligence Division will:

- a) review and submit changes for the chapters that fall under their jurisdiction;
- b) consult with the OPI, OCI and the appropriate HQ areas to resolve any outstanding issues;
- c) ensure proper approval is received to any proposed changes to the chapters/policies or procedures; and
- d) forward changes to the appropriate chapter, an explanation of the changes and a list of who was consulted to HPP.

Office of Collateral Interest

24. The offices of collateral interest will:

- a) review changes to the EN Manual within two weeks of receipt of a request from HPP; and
- b) deal directly with the OPI to come to a consensus on any controversial policy.

Regional Program Services

25. The Regional Program Services will:

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- a) direct requests for changes through the OPI;
- b) advise HPP of impending changes to be problematic; and
- c) advise local offices when changes are uploaded.

ENFORCEMENT MANUAL

Part 1

INTRODUCTION

Chapter 2

HEALTH AND SAFETY

17-12-07

POLICY STATEMENT

1. CBSA officers, including Investigators, Hearing Officers, Enforcement Officers and Intelligence Officers, work in a wide variety of environments, including within CBSA inland offices, at ports of entry and at various field locations that may include both public and private places not owned or controlled by the CBSA, as well as overseas locations.
2. As such, health and safety considerations are paramount in the nature of the work undertaken by those CBSA Officers.

DEFINITIONS

3. Refer to Part 11 - Glossary.

AUTHORITIES

4. The CBSA is responsible for providing its employees with a healthy and safe work environment in accordance with the **Canada Labour Code** (Code), Part II. Generally speaking, the Code establishes the legislative framework and outlines the duties and responsibilities of the employer and employees pertaining to their health and safety.
5. You can find a specific section of the *Canada Labour Code* through the index at the following link:
<http://laws.justice.gc.ca/en/showtdm/cs/L-2>
6. The **Canada Occupational Health and Safety Regulations** (COHSR) identifies, in much greater detail, the specific requirements in order to ensure a healthy and safe work place. Wherever a duty of the employer prescribes specific requirements, there will be a corresponding regulation to explain the detail of those requirements.
7. You can find a specific subject COHSR regulations through the index at the following link: <http://laws.justice.gc.ca/en/showtdm/cr/SOR-86-304/?showtoc=&instrumentnumber=SOR-86-304>
8. In addition to legislative requirements, all activities undertaken by CBSA employees must be in accordance with the Government of Canada's policies and procedures regarding Occupational Health and Safety (OHS), and with the National Joint Council OHS Directives.

9. The federal government must provide employees with a healthy and safe work environment. The **Treasury Board** (TB) has developed health and safety policies that apply to departments and agencies listed in Schedule I, Part I of the *Public Service Staff Relations Act*.
10. Under the TB policies the CBSA must establish and maintain effective occupational safety and health (OSH) programs consistent with Treasury Board policies, standards and procedures, in addition to the Canada Labour Code requirements.
11. You can find a specific TB OHS Policy at the following link: http://www.tbs-sct.gc.ca/hr-rh/osh-sst/index_e.asp
12. **National Joint Council** (NJC) of the Public Service of Canada is the Forum of Choice for co-development, consultation and information sharing between the government as employer and public service bargaining agents. Through NJC, the parties work together to resolve problems and establish terms of employment that apply across the public service, which includes health and safety.
13. You can find a specific NJC OHS Directive at the following link: <http://www.njc-cnm.gc.ca/doc.php?did=142&lang=en>

PURPOSE AND SCOPE

14. The purpose of this policy is to identify the CBSA's commitment to and responsibility for the health and safety of its employees. The CBSA is committed to the prevention of accidents and injury to health through the provision and maintenance of a healthy and safe work place.

POLICY GUIDELINES

15. The health and safety of employees at the CBSA is paramount. Every employee of the CBSA is entitled to, and has the right to expect to be provided with a healthy and safe work place.
16. It is the policy of the CBSA to meet its duties and responsibilities for the health and safety of its employees by adhering to relevant health and safety legislative requirements, standards, policies and procedures by assigning specific and general responsibilities to protect their health and safety and that of their fellow employees while at work.

17. The CBSA will endeavour to take the necessary steps to provide instruction, training and supervision to ensure the health and safety of its employees, and to inform them of their rights, duties and responsibilities to protect their health and safety and that of their fellow employees while at work.
18. The CBSA will undertake to facilitate employee consultation and participation in work place health and safety activities, through the establishment of health and safety committees and representatives. Their role is to assist in the development and implementation of health and safety policies and procedures and the maintenance of safe work place practices and conditions, and to conduct ongoing inspections of the work place
19. The CBSA expects that all employees will protect their own health and safety by complying with prevailing legislation, regulations, standards and with safe practices and procedures established by the CBSA, and that employees must report any health hazards, unsafe conditions, practices and accidents to their immediate supervisor.
20. The CBSA will ensure that all managers and supervisors who are responsible for health and safety are made aware of their duties and responsibilities, including the investigation of hazards, complaints and accidents.

ROLES AND RESPONSIBILITIES

21. The CBSA's Occupational Health and Safety Section, Labour Relations and Compensation Directorate, Human Resources Branch, is responsible for the overall occupational health and safety program within the CBSA. Visit the website at:
22. All staff are reminded that the CBSA provides an Employee Assistance Program (EAP) to its employees. The EAP program provides confidential assistance, information, and advice to employees and their families who voluntarily seek help with issues that are affecting their personal happiness or performance at work. It is fully supported by CBSA management, and the unions that represent CBSA employees. Further information on the EAP can be obtained confidentially from the regional EAP contact persons.
23. It is possible that from time to time a CBSA Officer may feel that an OHS related issue might be impacting on their psychological health. Should an Officer develop concerns of this nature, it is advisable they discuss the matter with a member of their regional Management, and identify potential solutions, including the assistance of EAP.

EN Part 1 Chapter 2

Health and Safety

24. Many individual policies within the CBSA have information relating to health and safety obligations and requirements specifically referenced within. Officers should consult the policies pertaining to the activities they are conducting for specific Health and Safety instructions.

EN Part 2 Chapter 1

Alcohol and Tobacco

CBSA ENFORCEMENT MANUAL

Part 2

ENFORCEMENT PRIORITIES

Chapter 1

ALCOHOL and TOBACCO

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POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to administer its responsibilities with respect to alcohol and tobacco products in accordance with the provisions set out in the *Customs Act*, the *Customs Tariff*, the *Excise Act*, the *Excise Act, 2001*, the *Criminal Code* and court jurisprudence.

Note: Hereafter, any reference to alcohol is intended to include spirits, wine and beer. Any reference to tobacco products is intended to include manufactured tobacco or cigars. "Blunts", a combination of tobacco, paper and a flavouring compound are also considered to be a tobacco product.

DEFINITIONS

2. Refer to Part 11- Glossary

AUTHORITIES

Customs Act

3. Section 99 - Stipulates that a CBSA officer has the right to examine goods by opening, or causing to be opened, any container or package and may take a reasonable amount as a sample.
4. Paragraph 109.1(1) - Stipulates that every person who fails to comply with any provision of an Act or a regulation designated by the regulations made under paragraph (3) is liable to a penalty of not more than \$25,000, as the Minister may direct.
5. Paragraph 109.2(2) - Stipulates that every person is liable to a penalty equal to double the total of the duties that would be payable on like tobacco products or designated goods released in like condition at the rates of duties applicable to like tobacco products or designated goods at the time the penalty is assessed, or to such lesser amount as the Minister may direct, if the person:
 - a) removes tobacco products or designated goods or causes tobacco products or designated goods to be removed from a customs office, sufferance warehouse, bonded warehouse, or duty free shop in contravention of this Act or the *Customs Tariff* or the regulations made under those Acts, or

- b) sells or uses tobacco products or designated goods designated as ships' stores in contravention of this Act or the *Customs Tariff* or the regulations made under those Acts.
- 6. Section 110 - Stipulates that a CBSA officer may, with reasonable grounds, seize goods involved in a contravention of the *Customs Act* as well as the conveyance used in the contravention.
- 7. Subsection 117(2) - Provides that if spirits, wine, specially denatured alcohol, raw leaf tobacco or tobacco products are seized under this Act, they shall not be returned to the person from whom they were seized or any other person unless they were seized in error.
- 8. Section 118 - Authorizes CBSA officers to release any seized conveyances to the person from whom they were seized or to a person they authorize, on receipt of a sum of money equal to the value of the goods plus the duties and taxes where applicable or such lesser amount as the Minister may direct.
- 9. Paragraph 142.1(1) - Provides that if spirits, wine, raw leaf tobacco or tobacco products are abandoned or forfeited under the *Customs Act*, they may, subject to regulations, be sold, destroyed or otherwise dealt with.
- 10. Section 159 - Stipulates that it is an offence to smuggle or attempt to smuggle any goods subject to duties, or any goods the importation of which is prohibited, controlled, or regulated by or pursuant to this or any other Act of Parliament.
- 11. Section 160 - Stipulates that a person who contravenes certain sections of the *Customs Act*, for example tobacco smuggling, is guilty of an indictable offence or an offence punishable by summary conviction and is liable to a fine and/or imprisonment.

Customs Tariff

- 12. Rates of duty for spirits and tobacco products are listed in Section IV and Section XXI of the *Customs Tariff*.

Excise Act 2001

- 13. Subsection 35(1) of the *Excise Act, 2001* - Stipulates that imported tobacco products or raw leaf are to be packaged in a package that has prescribed information printed on it and to be stamped before it is released under the *Customs Act*, for entry into the duty-paid market.

14. Schedules 1, 2, and 3 of the *Excise Act, 2001* provides rates of duty on tobacco products, additional duty on cigars and rates of special duties on certain manufactured tobacco.
15. Schedules 4, 5, and 6 of the *Excise Act, 2001* provides rates of duty on spirits, special duties on spirits, and duty on wine.

Excise Act

16. Schedule II of the *Excise Act* provides rates of duty on beer and malt liquor.

PURPOSE AND SCOPE

17. The purpose of this policy is to outline the CBSA's position with respect to its role in the detention, determination and disposal of alcohol and tobacco products.
18. This policy applies to all employees of the CBSA and relates to goods entering Canada through any means (e.g. postal, marine, travellers).

POLICY GUIDELINES

19. This policy deals with both personal and commercial seizures.
20. While the *Customs Act* provides for the seizure of all goods and conveyances that have been forfeited, it is not the policy of the CBSA to take seizure action in all cases. It is recognized that not all contraventions of the *Customs Act* or the regulations are intentional on the part of the person who contravenes them. Negligence, carelessness and lack of knowledge on the part of the importer are factors worthy of consideration when deciding whether or not to proceed with a penalty action.
21. When a conveyance is made use of in the importation of intentionally non-reported goods or goods subject to seizure for untrue statements, the conveyance becomes subject to seizure. In cases involving public conveyances, where passengers are discovered with unreported goods, the conveyance is not to be seized. If it is determined that the person in charge of the conveyance is implicated, then the conveyance may be seized.

ROLES & RESPONSIBILITIES

CBSA Officers

22. CBSA officers are responsible for:

- a) being aware of current intelligence, trends, methods of operating, concealment methods, routings, and other information associated with alcohol and tobacco smuggling;
- b) conducting compliance verification of both travelers and commercial shipments;
- c) determining the proper enforcement action; and
- d) collecting duties and taxes.

Regional Intelligence Officers

23. Regional Intelligence Officers (RIOs) are responsible for:

- a) facilitating the exchange of timely information or intelligence concerning individuals and organizations suspected of involvement in the smuggling of alcohol and tobacco product activities;
- b) participating in Joint Force Operations (JFO's) related to tobacco and alcohol issues;
- c) maintaining liaison with other law enforcement officers and other officials at the municipal, provincial and federal levels who deal with tobacco and alcohol issues; and
- d) contacting the CBSA lab regarding unusual or suspicious samples of alcohol and tobacco products.

Regional Investigators

24. Investigators are responsible for reviewing referrals resulting from alcohol and tobacco product seizures to determine whether or not a criminal prosecution should be considered, or whether a further investigation is warranted.

EN Part 2 Chapter 1

Alcohol and Tobacco

Investigation Division

25. The Investigation Division is responsible for prosecuting all offences under the *Customs Act*.

Intelligence Directorate

26. The Intelligence Directorate is responsible for:
- a) maintaining up-to-date enforcement data;
 - b) providing operational support and guidance to RIOs and Regional Intelligent Analysts; and
 - c) providing CBSA representation on international, intra-agency committees and working groups related to alcohol and tobacco issues.

PROCEDURES

28. When a CBSA officer has determined that there has been a contravention of the *Customs Act* with respect to alcohol and/or tobacco products and seizure action is deemed warranted, the officers are to:

- a) seize the goods; and
- b) offer no terms of release.

29. If the contravention involves the Courier or Low Value Shipment (LVS) streams, seizure action is to be made against the exporter. The importer/consignee is to be listed on the seizure report as an associate.

Note: Any declared tobacco products found in the LVS stream must be removed from this stream using a form Y50 and put into the regular courier stream.

30. If the seizure involves alcohol and/or tobacco products equal to, or over the thresholds stated in EN Part 9, Chapter 1, paragraph 16, (Customs Prosecution Policy), CBSA officers must contact the Criminal Investigations Division.
31. For seizures of alcohol and/or tobacco products equal to, or over the amounts listed below, CBSA officers must send a K153 Significant Seizure Report to the Organized Crime and Contraband Intelligence Section of the Intelligence Development and Field Support Division as soon as is operationally possible:

- a) 40 litres of liquor;
 - b) 25 cases of beer;
 - c) 30 litres of wine with duties and taxes evaded over \$2,000.00;
 - d) 25 cartons of cigarettes;
 - e) 100 cigars; or
 - f) five kilos of loose tobacco.
32. If the seizure involves a commercial importation, apply the appropriate Administrative Monetary Penalty (AMP) in accordance with Part 5, Chapter 1, Commercial Seizures, Ascertained Forfeitures and AMPS.
33. If the seizure is against a traveller, apply a conveyance penalty as stipulated in Part 5, Chapter 2, Traveller Seizures and Ascertained Forfeitures.
34. If the seizure involves a commercial importation, do not apply a conveyance penalty unless the vehicle has been modified and used for smuggling.
35. If a substance such as Betel Nut is found mixed with tobacco, this substance is to be treated as a tobacco product.
36. To determine the dollar values for tobacco product seizures, CBSA officers are to use the average retail price in the destination province. For example, Ontario marked cigarettes found in British Columbia should be assigned a value consistent with the Ontario market. If there is no indication that the cigarettes will be forwarded, the value for the seizing province will be used. Counterfeit cigarettes should be valued based on this standard.

Disposal of Seized Alcohol and Tobacco Products

37. Paragraph 142.1(1) of the *Customs Act* states that if spirits, specially denatured alcohol, wine, raw leaf tobacco or a tobacco product is abandoned or finally forfeited under this Act, the Minister may sell, destroy or otherwise deal with it. Subject to the regulations, the sale under subsection (1) of:
- a) spirits or specially denatured alcohol may only be to a spirits licensee;
 - b) wine may only be to a wine licensee; and
 - c) raw leaf tobacco or a tobacco product may only be to a tobacco licensee.

Stamping and Marking of Tobacco Products

38. The *Excise Act, 2001*, requires that imported tobacco products or raw leaf tobacco be packaged in a package that has prescribed information printed on it, and be stamped before it is released under the *Customs Act*, for entry into the duty-paid market.

Note: The following is a link to the *Excise Act, 2001* - Stamping and Marking of Tobacco Products Regulations.

Stamping and Marking Regulations - Excise Act 2001

39. Refer to D memo 18-2-1, *Imported Tobacco Products and the Return of Canadian Manufactured Products*, for procedures regarding importing tobacco products and the return of Canadian manufactured tobacco products.
40. Refer to D memo 18-3-1, *Reporting and Accounting of Excise Duties on Imported Tobacco, Tobacco Products, Wine and Spirits, and Release of Those Goods* for procedures regarding commercial importations of wine, spirits, raw leaf tobacco and tobacco products.
41. For detailed information on the storage, control and disposal of goods, please refer to the Comptrollership Manual, Material Management Volume:

Control of Seized, Detained, Abandoned and Forfeited Goods:
[Policy](#) [Guidelines](#)

Disposal of Seized, Detained, Abandoned and Forfeited Goods:
[Policy](#) [Guidelines](#)

REFERENCES

42. *Customs Act*
Customs Tariff
Excise Act
Excise Act, 2001
Stamping and Marking of Tobacco Products Regulations
D memo 18-2-1 *Imported Tobacco Products and the Return of Canadian Manufactured Products*
D memo 18-3-1 *Reporting and Accounting of Excise Duties on Imported Tobacco, Tobacco Products, Wine and Spirits, and Release Those Goods*

RESPONSIBLE OFFICE

Office of Primary Interest: Borders Enforcement Division

Office of Collateral Interest: Intelligence Development and Field Support
Division

ENFORCEMENT MANUAL

Part 2

ENFORCEMENT PRIORITIES

Chapter 2

CROSS-BORDER CURRENCY AND MONETARY INSTRUMENTS REPORTING POLICY AND PROCEDURES

Part 2 Chapter 2

CROSS-BORDER CURRENCY AND MONETARY INSTRUMENTS REPORTING POLICY AND PROCEDURES

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to administer and enforce Part 2 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) and its regulations.

DEFINITIONS

2. Refer to Part 11 - Glossary.

AUTHORITIES

The Proceeds of Crime (Money Laundering) and Terrorist Financing Act
(PCMLTFA)

3. Part 2 – Provides the obligation to report to a Border Services Officer (BSO) the cross-border movement of currency or monetary instruments of a value equal to or greater than a determined threshold, as well as the authority for the Canada Border Services Agency (CBSA) to administer and enforce Part 2 of the Act.

Cross-Border Currency and Monetary Instruments Reporting Regulations

4. Establishes the threshold amount for currency reporting at CAN \$10,000 or its equivalent after conversion, the general manner of reporting, retention, the prescribed amount of the penalties, and administrative details.

PURPOSE AND SCOPE

5. The purpose of this policy is to provide guidelines to CBSA officers in the event of imports or exports of currency or monetary instruments totalling CAN \$10,000 or greater.
6. This policy applies to all CBSA officers in all modes of transportation.

BACKGROUND

7. Organized crime and money laundering are problems that affect all Canadians. Money laundering is a serious criminal offence entailing the illegal movement of funds, estimated to be billions of dollars, through Canada each year. The impact of organized crime and money laundering goes beyond easily recognized consequences such as violence and economic losses to include less visible social costs.
8. Money laundering is the process by which "dirty money" generated by criminal activities is converted into assets that cannot be easily traced back to their illegal origins. A significant proportion is linked to profits from the illicit drug trade but

Part 2 Chapter 2

CROSS-BORDER CURRENCY AND MONETARY INSTRUMENTS REPORTING POLICY AND PROCEDURES

proceeds from other crimes, including burglaries and cigarette smuggling, are also involved. Money laundering activities, when carried out through financial institutions, can have an adverse effect on their reputations.

9. In the past several years, the federal government has taken a number of steps against organized crime and terrorist financing activities. New provisions were added in the *Criminal Code* and other federal statutes, such as the *Customs Act*, to target criminal organizations and to seize the proceeds of their illegal activities.
10. The detection of money associated to the proceeds of crime at the border had been particularly problematic, as CBSA officers did not have the authority to question persons on importation or exportation of currency under the *Customs Act*. Illegal money encountered during the normal customs process was only seized under the high standards of the *Criminal Code*.
11. In view of these gaps, the federal government incorporated the mandatory reporting of suspicious transactions and cross-border movements of currency and monetary instruments into the new *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. Part 2 of the PCMLTFA, from which the Cross-Border Currency and Monetary Instruments Reporting Regulations stem, came into effect January 6, 2003. Part 2 imposes on every person and entity the obligation to report the importation or exportation of currency or monetary instruments of a value equal to or greater than the prescribed threshold of CAN \$10,000. The objective of the Act is to implement specific measures to detect and deter money laundering and terrorist financing activities. It also facilitates the investigation and prosecution of money laundering offences and terrorist financing offences by requiring the reporting of suspicious financial transactions and the cross-border movements of currency and monetary instruments.

POLICY GUIDELINES

Note: Unless otherwise specified, all references to “currency” and “monetary instruments” refer to those equal to or greater than CAN \$10,000, or its equivalent in a foreign currency.

General

12. There is no limitation on the total amount of currency or monetary instruments that may be brought into or taken out of Canada, nor is it illegal to do so.
13. Foreign currency will be considered to have the same value of Canadian currency based on the Bank of Canada official conversion rate of the day. You can find the official conversion rate of the day on the Customs Commercial System (CCS) or the Bank of Canada website.

Note: If no official conversion rate is set out for that currency, use the conversion rate

Part 2 Chapter 2

CROSS-BORDER CURRENCY AND MONETARY INSTRUMENTS REPORTING POLICY AND PROCEDURES

that the person or entity would use for that currency in the normal course of business at the time of the importation or exportation.

14. The reporting of currency must be made in writing on the appropriate form (E677, E667, and/or E668) and must be signed and submitted by the importer/exporter.

The Cross-Border Currency or Monetary Instruments Report – Individual (E677) form is used to report situations where the importer or exporter physically carries the currency or monetary instruments across the border.

The Cross-Border Currency or Monetary Instruments Report – General (E667) form is used to report all other situations such as when mailing, shipping by courier, or transporting on someone else's behalf. In the case of mail, the exporter who is sending the currency or monetary instruments to Canada is required to affix a Customs Declaration form CN23 on the outside of the mail item and include a completed E667 currency report inside the item.

The Cross-Border Currency or Monetary Instruments Report Made by Person in Charge of Conveyance (E668) form is used to consolidate all currency and monetary instruments transported by the person in charge of a conveyance. In addition, the importer or exporter also has to complete an E667.

15. CBSA officers may question persons regarding the possession of currency or monetary instruments, in accordance with their authorities under the PCMLTFA.
16. Where a completed currency report is submitted and complies with the conditions of this policy, it will be considered to meet the reporting requirements of the PCMLTFA.

Note: The requirements for import and export reporting require the same forms and data.

17. Monetary instruments means the following instruments in bearer form (blank, cash, to the bearer) or in such other form as title to them passes on delivery, namely,
 - (a) securities, including stocks, bonds, debentures and treasury bills; and
 - (b) negotiable instruments, including bank drafts, cheques, promissory notes, travellers' cheques and money orders, other than warehouse receipts or bills of lading.

Note: For greater certainty, this definition does not apply to securities or negotiable instruments that bear restrictive endorsements or a stamp for the purposes of clearing or are made payable to a named person and have not been endorsed.

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Importing – Individuals

18. Currency that is in the possession of a person must be reported at the point that the person reports to CBSA.

Importations by Mail

19. If a Universal Postal Convention (UPC) declaration form indicates currency or monetary instruments, however, the E667 currency report is either missing or incomplete, the currency will be retained and a retention notice will be issued to the exporter or if unattainable to the importer.
20. The exporter who is sending the currency or monetary instruments to Canada must affix a UPC declaration form to the outside and include a completed E667 currency report inside of the item.
21. Currency that is mailed from a location outside of Canada to another destination outside of Canada but transits through Canada by post are not required to be reported (e.g. St. Pierre et Miquelon).

Importations by Rail

22. The person in charge of a conveyance must report currency at the CBSA office that is nearest the place of importation open for business.
23. If currency is in the possession of a person, it is that person's responsibility to report it to the CBSA at the CBSA office nearest to the place of importation that is open for business.
24. Currency that is in the possession of a crewmember aboard a freight train must be reported immediately at a place specified by an officer. The crewmember will be processed as a traveller.

Commercial Importations by Air

25. Currency, which is transported by an air transportation company, may be reported at the CBSA office of the airport of destination as shown on the air waybill (provided the money is not offloaded before its destination).
26. The person in charge of a conveyance must present the completed currency report.

Reporting in the Air Travellers Mode

27. Primary questioning regarding currency is not required as the completion of a Customs Declaration Card (E311) fulfills the primary reporting requirements.

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Importing by Marine Vessel

28. Currency or monetary instruments on board a cargo or cruise ship entering Canada whose final destination is a place other than Canada, do not have to be reported provided that the currency or monetary instruments will not leave the ship.
29. Currency and monetary instruments on board a cargo or cruise ship, carried on behalf of the shipping line entering Canada whose final destination is Canada, must be reported.
30. Declarations must be accompanied by the appropriate cross-border currency and monetary instruments report forms.
31. Where permitted by the CBSA's process, crewmembers and passengers may report currency and monetary instruments using a Customs Declaration Card (E311).
32. A currency reporting form must also be submitted at the time of report.
33. The reporting requirements for passengers, merchants, and crewmembers are an individual responsibility.

Note: Under these circumstances there is no liability on behalf of the cargo or cruise ship.

Reporting at Point of Clearance

34. When a person onboard a commercial carrier arrives in Canada and whose destination is another place in Canada where there is a CBSA office, a currency report may be made at the point of entry.
35. A currency declaration must be made when a person disembarks at a point where they are required to report to the CBSA.

In-transit Passengers

36. Persons aboard a commercial passenger conveyance transiting through Canada are not required to report currency in their possession.
37. Other than to be transferred under the CBSA's control to another commercial conveyance for departure to a place outside of Canada, currency will not be removed from an in-transit area.
38. A currency report must be made if a person disembarks at a point that they are required to report to CBSA.

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Preclearance

39. At locations where a Preclearance Area has been designated under the *Preclearance Act*, the CBSA will not exercise any authority to enforce the PCMLTFA once a preclearance officer has cleared individuals for the purpose of entry into the United States.

Telephone Reporting Centres - Importation

40. Telephone Reporting Centers (TRC) may be utilized for currency declarations (i.e. CANPASS Aircraft and Private Boat).
41. Persons reporting to a CBSA officer by phone are permitted to make a currency declaration.

Self-reporting Modes

42. As the PCMLTFA requires that currency be reported to an officer, the various methods of self-reporting to the CBSA (CANPASS Highway, NEXUS, etc.) may not be used to report currency.

Any Other Case of Importation

43. In any other case a person on whose behalf currency is imported will report the currency at the place of importation.

Emergency Importations

44. In an emergency, the person in charge of a conveyance who must unload currency or monetary instruments from the conveyance before being able to make or submit an importation report in accordance with these regulations may submit the importation report by telephone or other expedient means and, as soon as possible after that, must make or submit a report.

Export Reporting - Individuals

45. Currency that is in the possession of a person must be reported at the CBSA office located nearest to the place of exportation that is open for business.

Exportations by Mail

46. For currency exportations by mail, the exporter must make the report.
Note: One copy of the report must be placed inside the mailed item. Another copy must be mailed or submitted to the nearest CBSA office prior to or at the time of mailing.

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Commercial Exportations

47. The exporter of currency, which is exported by a courier or transported on someone's behalf, must make a currency report.
48. The person in charge of a conveyance will present the completed currency report at the place of exportation.

Exporting – Marine vessels

49. Currency and monetary instruments on board a cruise or a cargo ship, as "cash to master" or carried on behalf of the shipping line departing from Canada will have to be reported using the appropriate cross-border currency and monetary instruments report forms at the time of departure.

Note: This does not include ships that are departing from Canada that imported currency or monetary instruments that were not required to report the currency or monetary instruments upon import.

Telephone Reporting Centres - Exportation

50. No provisions exist to utilize the Telephone Reporting Centre to declare the exportation of currency.

Other Exportations

51. In any other case, a person on whose behalf currency is being exported must make a currency declaration.
52. Currency reports must be made at the CBSA office at the place of exportation.

Reporting Exceptions - Diplomats

53. In accordance with these policy guidelines, it is the policy of the CBSA to give precedence to the provisions of *the Foreign Missions and International Organizations Act* over the reporting requirements of the PCMLTFA.

Reporting Exceptions - Bank of Canada

54. The PCMLTFA exempts the Bank of Canada from all import/export of currency reporting requirements.

Exemption Applicable to Imported Shares

55. A person or entity is not required to make a report under subsection 12(1) of the

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PCMLTFA with respect to stocks, bonds and debentures imported into Canada by courier or as mail if the importer is a financial entity or a securities dealer as defined in subsection 1(2) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* or a transfer agent.

Duty to Answer and Comply

56. Upon report of currency, a person making the report is obliged to answer truthfully any questions that an officer asks with respect to the information required to be in the report.
57. Upon request by an officer, a person making a report is required to present the currency, unload any conveyance or part of a conveyance or baggage, and open or unpack any package or container that the officer wishes to examine.

Cancellation of Reports

58. A person who declares currency may up to the time of a full report advise that they no longer wish to proceed with the importation or exportation.
59. A person who does not submit a currency report will be allowed to withdraw their intent to import or export their currency and/or monetary instruments.

Note: This right does not apply to **unreported** currency or monetary instruments.

Verification

60. When a person has made a currency report; an officer may examine the currency for the purposes of verifying the report.

Search of Persons

61. When an officer suspects on reasonable grounds that the PCMLTFA has been violated or that a person is attempting to circumvent the PCMLTFA, the officer may search any person:
 - a) who has arrived in Canada, within a reasonable time after their arrival in Canada
 - b) about to leave Canada, at any time before their departure
 - c) who has had access to an area for use by persons about to leave Canada, and who leaves that area but does not leave Canada, within a reasonable time after they leave the area.

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Examination of Conveyances

62. An officer, in order to determine whether there is an amount of currency or monetary instruments equal to or greater than CAN \$10,000 on or about the conveyance and that the currency has not been reported, may stop, board, and examine a conveyance, examine anything in or on it, open or cause to be opened any package or container in or on it, and direct the conveyance to be moved to a CBSA office or other suitable place for an examination.

Note: Conveyances cannot be seized under the PCMLTFA.

Search of Baggage

63. An officer, in order to determine whether there is an amount of currency or monetary instruments equal to or greater than CAN \$10,000 in the baggage and that the currency has not been reported, may examine the baggage and anything in it, open or cause to be opened a package or container in it, and direct that the baggage be moved to a CBSA office or other suitable place for an examination.

Search of Mail

64. Officers may examine and open any mail that weighs more than 30 grams that the officer suspects on reasonable grounds contains currency or monetary instruments equal to or greater than CAN \$10,000. This is to be done in the presence of another officer when and if feasible.
65. Officers may not examine or open any mail that weighs 30 grams or less unless the person to whom it is addressed consents or the person who sent it consents or has completed and attached a label in accordance with article 116 of the *Detailed Regulations of the Universal Postal Convention*.

Report Discrepancies

66. Officers are encouraged to use discretionary powers to allow persons to amend currency reports.

Note: It is recognized that not all contraventions of the PCMLTFA will be intentional. Negligence, carelessness, and lack of knowledge on the part of a person making a report are factors worthy of consideration when deciding whether or not to proceed with a penalty action.

Discretionary Powers

67. It is the policy of the CBSA not to seize or levy a penalty for every error in currency reporting.

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Note: It is recognized that during the verification of currency, occasionally errors will be encountered.

68. There is no legal provision relating to errors made regarding amounts being reported and it is not mandatory to apply a penalty.
69. It is the responsibility of the officer to determine if a penalty is reasonable under the circumstances.

Note: It is recognized that not all errors are intentional. Negligence, carelessness, and lack of knowledge on the part of a person making a report are factors worthy of consideration when deciding whether or not to proceed with a penalty.

Benefit of Doubt

70. It is the policy of the CBSA to extend the benefit of the doubt to persons when it appears evident that they were not aware of the CBSA's requirements.
 Note: For the purposes of administering the PCMLTFA, officers are encouraged to use the same benefit of the doubt as is utilized when enforcing the *Customs Act*.

Retention Pending Full Report

71. When a person indicates to an officer that they have currency or monetary instruments, the officer may retain the currency or monetary instruments pending completion of the report. The physical retention and safekeeping of the currency or monetary instruments will be done in accordance with the CBSA policies and procedures published in the Comptrollership Manual, Finance Volume.

Note: It is CBSA policy not to perform courtesy holds of currency and monetary instruments.

72. A notice will be given or sent by registered mail without delay.

Note: The regulations require that a notice be sent within 60 days of retention.

Note: providing a copy of the K24 (Non-Monetary Receipt) will fulfill a CBSA officer's "notice" obligation of the PCMLTFA.

73. The currency will no longer be retained, if the importer or exporter satisfies the officer that the reporting requirements have been met or that they have decided not to proceed with the importation or exportation within the seven days following the issuance of the notice.
74. When the requirements are not met within the prescribed period the currency or monetary instruments will be considered abandoned to the Crown.

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75. The prescribed seven-day reporting period will be replaced with a 30-day period for the purposes of a courier or mail shipment.

Seizures

76. If a person has not specifically been questioned concerning currency, penalties will not normally be levied unless there is clear evidence of intent to contravene the PCMLTFA.
77. Officers, who believe on reasonable grounds that subsection 12(1) of the PCMLTFA (reporting requirements) has been violated, may seize as forfeit currency or monetary instruments, as per subsection 18(1) of the PCMLTFA.
78. An officer must impose the prescribed penalty when a seizure occurs.
79. The following terms of release will be offered for currency or monetary instruments:

Level 1

- a) \$250, in the case of a person or entity who:
- I. has not concealed the currency or monetary instruments,
 - II. has made a full disclosure of the facts concerning the currency or monetary instruments on their discovery, and
 - III. has no previous seizures under the PCMLTFA.

Level 2

- b) \$2,500, in the case of a person or entity who:
- I. has concealed the currency or monetary instruments, other than by means of using a false compartment in a conveyance, or
 - II. has made a false statement with respect to the currency or monetary instruments, or
 - III. has a previous seizure under the PCMLTFA, other than in respect of any type of concealment or for making false statements with respect to the currency or monetary instruments.

Level 3

- c) \$5,000, in the case of a person or entity who:
- I. has concealed the currency or monetary instruments by using a false compartment in a conveyance, or
 - II. has a previous seizure under the PCMLTFA for any type of concealment or for making a false statement with respect to the currency or monetary instruments seized under the PCMLTFA:

80. No terms of release are offered for currency or monetary instruments suspected to be related to proceeds of crime or terrorist finances:

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Level 4

No terms of release: Officers who suspect on reasonable grounds that non-reported currency or monetary instruments are proceeds of crime or terrorist finances, may seize currency with no terms of release.

81. A person who reports the importation or exportation of currency or monetary instruments is required to report the full and accurate value of such currency or monetary instruments. Consequently, where currency or monetary instruments other than that reported are uncovered, both the value equal to the value reported and the value greater than the value reported are subject to seizure.
82. When seizing monetary instruments issued by a financial institution, the seizing officer will suspend the items by immediately notifying the appropriate financial institution by telephone.
83. CBSA officers have the discretion to leave a minimal amount of money (humanitarian reasons) to a person when they cannot pay the penalty imposed for non-reporting of currency and they are left without resources.

Note: The amount of money to be left for a person may be what the officer considers reasonable for the circumstances (e.g. money for food, gas or tolls and distance from residence). The officer should ensure that notes are taken as to the amount of money left in the custody of the traveller and the reasons.

Note: This money is not included in the actual amount seized.

84. When seizing currency and/or monetary instruments, it is imperative that detailed notes be taken. Seizure documentation and narrative report must be completed as soon as possible following any seizure action. Reports should provide a clear articulation of the indicators gathered, supporting the decision to seize.

Note: Reports should be based on the officer's recollection of events with the aid of notes taken during or immediately after the seizure. The style of report writing is optional, however all reports must be logical, objective and professional. Remarks which might be interpreted as slanderous must not be included. Only the facts of the occurrence should be included.

Establishing Proceeds of Crime Criteria Under the PCMLTFA

85. To seize with no terms of release, CBSA officers must have reasonable grounds to suspect that currency or monetary instruments are proceeds of crime or terrorist finances.

Note: Proceeds of crime means any property, benefit or advantage, within or outside

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Canada, obtained or derived directly or indirectly as a result of “the commission in Canada of an enterprise crime offence or a designated substance offence, or an act or omission anywhere that, if it had occurred in Canada, would have constituted an enterprise crime offence or a designated substance offence.”

Note: The officer must have reasonable grounds to suspect. A reasonable suspicion is not arbitrary, not random, and not based on irrelevant factors. Mere suspicion without an articulable reason is not enough, but a suspicion based on the experience of an officer together with the facts of a given case will be sufficient.

86. Persons who fail to properly report currency or monetary instruments will not be arrested for violations of the PCMLTFA, regardless of whether or not the seized currency or monetary instruments are suspected proceeds of crime.
 Note: Failure to properly report currency or monetary instruments is a civil offence.
87. When currency or monetary instruments are reported and there are reasonable grounds to suspect that they are proceeds of crime or terrorist finances, they cannot be seized under the PCMLTFA. In consultation with the Integrated Proceeds of Crime unit (IPOC), they could be seized under the *Criminal Code*.

Written Notice

88. Giving a person a copy of a seizure receipt will fulfill a CBSA officer’s “written notice” obligation of the PCMLTFA.
 Note: The PCMLTFA legislates that an officer who seizes currency must give the person “written notice” of the seizure and of the right to appeal. Providing a copy of the K19C –Seizure Receipt – Cross-Border Currency and Monetary Instruments satisfies this obligation.

Disposition

89. The moment currency is seized it becomes the property of the Crown.
 Note: As the person from whom it was seized no longer owns the property, the penalty may not be withdrawn from the currency that has been seized.
90. Seizing officers should attempt to determine when a person would be able to gain the release of the seized currency or monetary instruments.
 Note: A person may not have the means to pay for the release of the seized currency or monetary instruments at the time of the seizure.
91. Should a person indicate that they wish to make the seizure payment within a reasonable amount of time, the currency or monetary instruments should be held under the CBSA’s control pending release.

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92. The hold-for-payment process is intended to allow persons/entities to gain release of their seized currency or monetary instruments within a reasonable amount of time. Depositing or forwarding it to Public Works and Government Services Canada / Seized Property Management (PWGSC/SPM) may delay its return.

Note: Should the circumstances of the seizure provide any security concerns, the currency or monetary instruments are to be deposited or transferred to PWGSC/SPM immediately.

93. Upon payment of the penalty, currency will be returned to either the importer/exporter or rightful owner.
94. You must ensure that the disposition of the currency is recorded on the Confirmation of the Return of Seized Currency and/or Monetary Instruments (Appendix B), the K19 and/or the Integrated Customs Enforcement System (ICES). Currency and Monetary instruments that are seized and not subsequently released are to be forwarded to PWGSC/SPM in accordance with established procedures for handling public funds received at the port of entry.

Forfeiture

95. All retained currency or monetary instruments will become forfeited, following the completion of the notification period:
- a) 30 days after the day on which the retention notice was given for importations or exportations by courier or as mail;
 - b) In any other case, seven days after the day on which the retention notice is given or sent.
96. All forfeited currency and monetary instruments must be deposited or forwarded to PWGSC/SPM.
97. Circumstances of the forfeiture must be forwarded to the Programs Branch at cbscr.dmte@cbsa-asfc.gc.ca.

Transfer of Monies

98. Currency that is or becomes forfeited or is seized and the financial penalties associated with the PCMLTFA must be promptly deposited to the credit of the Receiver General and transferred by the Interdepartmental Settlement process to PWGSC or, if the currency is not acceptable for deposit by Canadian financial institutions, forwarded directly to PWGSC/SPM.
99. The safekeeping and physical movement of the currency and monetary instruments shall be done in accordance with CBSA financial policy and procedures published in

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the Comptrollership Manual, Finance Volume. The transportation of such monetary items either for deposit to the credit of the Receiver General or directly to PWGSC/SPM shall be in accordance with secure transportation procedures prescribed by the CBSA Corporate Security and Internal Affairs Division or by PWGSC/SPM.

100. Should the approved standards be considered inappropriate due to the circumstances of the seizure, local management may authorize an alternate method for moving the currency.
101. Officer safety will remain the highest concern, and must be taken into consideration when transferring money.

Request for Review of a Seizure Process

102. Within 30 days after the date of the seizure, the Recourse Directorate or a border services officer may:
 - a) cancel the seizure, or cancel or refund the penalty if it is satisfied that there was no contravention; or
 - b) reduce the penalty or refund the excess amount of the penalty collected if there was a contravention but the Recourse Directorate considers that there was an error with respect to the penalty assessed or collected.
103. Within 90 days after the date of the seizure, the person from whom the currency was seized, or the lawful owner, has the right to request a decision from the Minister in the enforcement action.

Note: The PCMLTFA details the provisions for disputes of currency seizures.

104. The Recourse Directorate has been delegated to act on behalf of the Minister in the seizure of currency.
105. The request for review must be sent to the Recourse Directorate.
106. When a dispute is received, Recourse Directorate will act on behalf of the President.

Note: The PCMLTFA requires that the President, without delay, serve written notice (Notice of Reasons for Action) of the circumstances of the seizure to the person who requested a review.

107. The Recourse Directorate will forward to the appellant, by registered mail, a letter outlining the reasons for the seizure.

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108. When money laundering or terrorist financing charges are laid in connection with a seizure, the Recourse Directorate may delay rendering a decision to no later than 30 days after the conclusion of the court proceedings.
109. If the Recourse Directorate finds that there has been no contravention, they will notify PWGSC/SPM to refund the penalty that was paid for return of the currency; or to return the monetary instruments; or return an amount equal to the value of the money seized.
110. A person, who has requested an appeal, may within 90 days after being notified of the decision, appeal to the Federal Court.
111. When brought before the Federal Court of Canada, Trial Division, the matter will be turned over to the Department of Justice.
112. The Recourse Directorate will continue to oversee and instruct legal counsel on the proceedings and will have the final say in the disposition of any appeal.

Third Party Claims

113. A third party claiming interest in seized currency may, within 90 days after a seizure, make an application in writing to the court for a third party claim.
114. The court receiving the request must hear the appeal within 30 days of receiving the application.
115. It is the responsibility of the third party making the claim to serve notice of an application and of a hearing to the President, or an officer designated by the President (Recourse Directorate).
116. When civil litigation becomes necessary, third party cases will be turned over to the Justice Department and the Recourse Directorate will oversee and instruct legal counsel on the proceedings and will have the final say in the position taken by the CBSA in contesting a third party application.

Note: The applicant must prove that their interest in the currency was acquired in good faith prior to the contravention; that the applicant is innocent of any complicity resulting in the contravention; and that they exercised reasonable care to ensure that the currency would be reported.

117. On final forfeiture of currency and in accordance with the court order, the Recourse Directorate on behalf of the President will instruct the Minister of Public Works and Government Services to return to the applicant any seized currency or monetary instruments or an amount calculated on the basis of their interest as declared in the

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court order.

118. Either the CBSA or the third party making the application may appeal an order made by the court.

Disclosure by the CBSA

119. Information obtained under the PCMLTFA is not CBSA information and has to be used and disclosed only as provided for under the PCMLTFA.
120. The exception to the disclosure of information is the forwarding of reports presented by individuals and entities to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).
121. Officers may disclose information to FINTRAC if they have reasonable grounds to suspect that the information would be of assistance to FINTRAC in the detection, prevention, or deterrence of money laundering or terrorist financing.
122. Information obtained under the PCMLTFA may be used internally when it is relevant to the administration and enforcement of that Act, the *Customs Act* or in determining whether a person is a person described in sections 34 to 42 of the *Immigration and Refugee Protection Act* or is relevant to an offence under any of sections 117 to 119, 126 and 127 of that Act.
123. Information gathered as a result of the administration or enforcement of the PCMLTFA may be disclosed, to the appropriate police force, if an officer has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting a money laundering or terrorist financing offence.
124. If an officer decides to disclose information gathered under the PCMLTFA, the Act requires that the officer record in writing the reasons for the decision. It is the policy of the CBSA that such disclosures of information be conducted by the CBSA Integrated Proceeds of Crime (IPOC) members or by a person acting on their behalf (Intelligence staff).

Disclosure by FINTRAC

125. The PCMLTFA permits the disclosure of information to the CBSA where FINTRAC determines that information is relevant to an offence related to the importation of goods, which are prohibited, controlled or regulated under the *Customs Act* or is relevant in determining whether a person is a person described in sections 34 to 42 of the *Immigration and Refugee Protection Act* or is relevant to an offence under any of sections 117 to 119, 126 and 127 of that Act and money laundering or the financing of terrorist activities

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CROSS-BORDER CURRENCY AND MONETARY INSTRUMENTS REPORTING POLICY AND PROCEDURES

Disclosure during Court proceedings

126. It is the policy of the Agency that the procedures detailed in the Customs Enforcement Manual, Part 9, Chapter 4, will be followed when a BSO receives a subpoena to testify regarding the PCMLTFA. A person served with a subpoena is required to comply with the order as it pertains to legal proceedings that relate to the administration or enforcement of the PCMLTFA.

Disclosure to the Department of Citizenship and Immigration

127. The PCMLTFA allows the CBSA to disclose information obtained during the enforcement or administration of the PCMLTFA to Citizenship and Immigration Canada (CIC) when it would be relevant in determining whether a person is a person described in sections 34 to 42 of the *Immigration and Refugee Protection Act*.

Note: FINTRAC may disclose information directly to CIC if they believe that the information is relevant to promoting the objectives of the *Immigration and Refugee Protection Act* (IRPA).

Counterfeit Currency/Monetary Instruments

128. Counterfeit currency and monetary instruments are not considered legal tender and are therefore outside of the realm of the PCMLTFA.

ROLES AND RESPONSIBILITIES CBSA

Officers

129. CBSA officers are responsible for:

- a) facilitating the reporting of currency and monetary instruments equal to or greater than CAN \$10,000 under the PCMLTFA;
- b) seizing non-reported currency and monetary instruments equal to or greater than CAN \$10,000 under the PCMLTFA, when appropriate;
- c) adhering to the personal search policy and procedures;
- d) exercising diligence, due care and comply with the relevant financial control policies, guidelines and procedures; and
- e) updating the appropriate checklist.

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CBSA Managers and Superintendents

130. CBSA managers and superintendents are responsible for:

- a) ensuring compliance with this policy and procedures;
- b) providing the necessary assistance and support to CBSA officers;
- c) ensuring breaches of this policy or procedures are dealt with accordingly;
- d) evaluating the reasonable grounds to suspect that currency or monetary instruments are proceeds of crime as presented by a CBSA officer;
- e) ensuring that the policies and procedures related to personal searches are adhered to by CBSA officer; and
- f) ensuring that the appropriate checklist has been completed.

Regional Intelligence Officers

131. Regional Intelligence Officers within Integrated Proceeds of Crime Units (IPOC), or person acting on their behalf, are responsible for facilitating the exchange of timely information or intelligence concerning individuals and organizations suspected of involvement in money laundering or terrorist financing activities.

Programs

132. The Programs Branch is responsible for:

- a) ensuring that all reports are forwarded to FINTRAC;
- b) notifying FINTRAC and PWGSC/SPM of all currency seizures;
- c) overseeing the administration of the regulations and the cross-border currency reporting program;
- d) consulting with regional or headquarters officials and providing advice and guidance, as required; and
- e) Approving the acquiring of tools used in the administration of the cross-border currency reporting program.

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PROCEDURES

Reporting

133. When referring a person for examination, ask them if they are in possession of currency or monetary instruments equal to or greater than a value of CAN \$10,000, after conversion.
134. When a person declares that they are in possession of currency or monetary instruments equal to or greater than a value of CAN \$10,000, ask additional primary questions when required.

Note: Persons will be offered the opportunity to make a full and complete declaration.

Common Elements to All Modes

Note: For all modes of importation and exportation, common elements exist and they are as follows.

135. Review the documentation (E677, E667 and/or E668) to ensure that all fields are completed to guarantee that all necessary information is provided
136. Ensure that reports are completed in a legible manner in one of the two official languages to allow accuracy of data capture
137. Ensure that E668 reports always accompany E667 reports. They must be sorted and attached together.
138. Eliminate the use of non-prescribed forms such as foreign declaration forms or commercial processing forms and replace them with the prescribed reports (E677, E667 and E668)
139. If all fields are completed, initial, date stamp, and retain the currency report (E677 or E667 and/or E668) for processing. All reports should be stamped at the time of importation or exportation to demonstrate that the legislative requirement to report to an officer has been met and to ensure the location where the report was submitted is clearly identified.
140. Do not provide the person/carrier a receipt.

Note: Acceptance of the reports fulfills the reporting requirements of the individual/courier/transporter. No further documentation will be required.

141. Release the person/courier/transporter if you do not feel that a secondary examination or verification is required.

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CROSS-BORDER CURRENCY AND MONETARY INSTRUMENTS REPORTING POLICY AND PROCEDURES

Reporting Procedures in the Highway Travellers Mode

142. Ask persons entering Canada specifically whether they have in their possession, or in their vehicle, currency or monetary instruments that are equal to or greater than a CAN \$10,000.

143. If a person declares that they have currency or monetary instruments greater than CAN \$10,000, advise them that they are required to submit a currency report.

Note: Refer to the Appendices for a sample of the forms.

144. If a person is in possession of a completed currency report, accept the report at primary.

145. If a person is not in possession of a completed currency report or if a secondary examination/verification is required, refer them to secondary.

146. When making a secondary referral:

a) indicate the currency declaration on the E67; and

b) indicate the amount of currency and country of origin in the E67 comments field (i.e. \$12,000 USD).

Note: The E67 Secondary Referral card has been modified to include a currency field

Reporting in the Highway Commercial Mode

147. The importer/exporter of currency is required to report currency brought in or out of Canada by courier or transporter.

Note: At the primary inspection line a person in charge of a conveyance may present a completed currency report form or make a verbal declaration indicating that they are in possession of currency or monetary instruments.

148. Refer couriers and transporters making verbal declarations for documentation.

Reporting in the Air Travellers Mode

149. When an E311 or primary questioning indicates a currency declaration, ask the person if they have a completed currency report.

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- 150. If a person presents a completed currency report, accept the report at primary.
- 151. If a person is not in possession of a completed currency report, or if an examination/verification is required, refer them to secondary.
- 152. Mark the E311 to indicate that a currency report is required, indicate the amount of currency and country of origin.

Reporting in the Marine Mode

- 153. The Ship Master will indicate on the Ships Stores Declaration (E1) if they are in possession or control of currency or monetary instruments totalling CAN \$10,000 or more.
- 154. If the Ship Master declares an amount of CAN \$10,000 or more, the E1 must be submitted with a completed currency report (E667 and E668).
- 155. Crewmembers with CAN \$10,000 or more in currency or monetary instruments must declare it on the Crew's Effects Declaration (Y14) or the Customs Declaration Card (E311) and be accompanied by a completed currency report.
- 156. If a person declares that they have currency or monetary instruments greater than CAN \$10,000, advise them that they are required to submit a currency report.

Note: Refer to the Appendices for a sample of the forms.

- 157. If a person is in possession of a completed currency report, accept the report at primary.
- 158. If a person is not in possession of a completed currency report or if a secondary examination/verification is required, refer them to secondary.

Mail

- 159. When processing declared currency, open the package and retrieve the currency report.
- 160. If the currency report is complete, consider the reporting requirements of the PCMLTFA to be met.
- 161. If a UPC declaration form indicates currency or monetary instruments, however the report is either missing or incomplete, retain the currency.

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162. Issue a retention notice to the exporter. If the exporter's address is not known, notify the importer

Note: Upon receipt of the retention notice, the exporter must report the currency at the CBSA office indicated on the notice. Report to the CBSA office and completion of the currency report forms, will fulfill the reporting requirements of the PCMLTFA.

Telephone Reporting Centres

163. When a currency report is made by telephone, where a Telephone Reporting Centre is available to clear the CBSA, complete the currency report form on the person's behalf.

Note: No signature will be required on the form.

Verification

Note: Where a person has made a currency report; an officer does not require reasonable grounds to examine the currency for the purposes of verifying the report.

164. When it is determined that the currency report is to be verified, when possible, count the currency and monetary instrument in the presence of another officer and the client out of the view of the public.
165. When it is determined that currency is to be retained or seized, count it in the presence of another officer.
166. When possible, as the officer counting the currency, take notes indicating the currency denominations and total values.
167. As the observing officer, initial the notes indicating that you witnessed the handling of the currency.
168. As the observing officer, ensure that you take notes regarding the handling of the currency as you may be considered as part of the chain of custody should legal proceedings result from the detention/seizure.
169. Handle currency, which is to be detained or seized, as if it were undeclared or prohibited goods.

Note: Refer to the Enforcement Manual, Part 9 Chapter 3 for the procedures for the handling of physical evidence. When currency is transferred to another entity as

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evidence, follow up with the entity regularly.

170. The safekeeping, handling and control of currency or monetary instruments seized for forensic purposes may be required and conducted by the Police in accordance with Departmental policy and procedures identified in the FAM.

Personal Searches

Note: The personal search process is similar to the *Customs Act*.

171. When conducting a personal search for currency, instead of reading section 98 of the *Customs Act*, read to the person section 15 of the PCMLTFA:

"I have reasonable grounds to suspect that you are carrying non-reported currency or monetary instruments above the prescribed amount on or about your person and I am detaining you for the purposes of a personal search as authorized by section 15 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*."

Retention

172. List the currency and monetary instruments on a K24 and give the importer or exporter the written notice identifying that the currency has been retained.
173. When currency sent by courier or mail is being retained, notify the exporter.
174. If the exporter's address is not known, notify the importer.

Commercial Retention Procedures

175. Detain currency and/or monetary instruments by completing a K24 when you examine a parcel/shipment, which has been declared as currency or monetary instruments, but the appropriate currency report forms are not present or are incomplete.
176. Communicate the retention to the exporter by sending them a copy of the K24.
177. If the address of the exporter is not known, send the receipt to the importer.
178. In either case, ensure a signature is required upon delivery.
179. Place a copy of the K24 with the currency.
180. Complete the physical retention of the currency and/or monetary instruments according to district standards (i.e. safes, vaults).

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Postal Retention Procedures

181. When declared currency or monetary instruments are encountered, however the package does not contain a completed currency report:
- a) produce a currency/monetary instruments retention form from the Postal Import Control System (PICS);
 - b) forward the PICS letter to the exporter; and
 - c) if the exporter's address is not known, send the letter to the importer.

Release

182. Release currency and/or monetary instruments when you are in receipt of the appropriate currency report or you are satisfied that a report has been made.
183. Cancel the K24 or PICS letter by referencing the name and date on the currency report(s).
184. Should the importer or exporter advise the CBSA within the prescribed period that they do not wish to proceed with the entry, release the currency or monetary instruments by:
- a) canceling the K24 or PICS letter by referencing the name and date on the currency report(s);
 - b) noting on the K24 that the request for entry or exit has been withdrawn; and
 - c) forwarding any incomplete currency reports to the Database unit of the Programs Branch.

PCMLTFA Seizures (ICES)

Note: The seizure documentation and process for PCMLTFA seizures are similar to *Customs Act* seizures.

Note: All of the *Enforcement Manual* procedures regarding the handling of evidence and the gathering of intelligence are applicable to seizures under the PCMLTFA.

Note: PCMLTFA seizures in the postal and courier stream may only be made against the exporter. There are no reporting requirements on the importer (recipient) of the currency or monetary instruments.

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BSOs will:

185. Enter seizure information into ICES by selecting the allegation “Non-Report of Currency or Monetary Instruments” from the appropriate drop box:

Note: The commodity drop box has been updated to include:

- a) Currency or Monetary Instruments (for levels 1-3); and
 - b) Suspected Proceeds of Crime (for No Terms of Release).
186. Ensure that all data fields on the K19 are fully completed at the time of seizure
 187. Ensure the accuracy of the data being input
 188. Ensure any data fields, including the narrative report, that may not be completed at the time of seizure are completed **no later than the fourth shift** after the occurrence
 189. Ensure that narrative reports contain the information contained in the guidelines below:
 - a) **When:** The date and time the contravention occurred
 - b) **Who:** The names and addresses of the subjects involved. Surnames should be in capital letters, and full names should be used, i.e., John Edward DOE
 - c) **Where:** In all instances, the form K19 will already identify the Port, however greater detail may be required as to where the enforcement action actually commenced (at primary, in the longroom, at secondary, at a sufferance warehouse, etc.)
 - d) **What:**
 - Information as to whether or not the currency or monetary instruments were reported must be included, as well as the value reported and the actual value discovered subsequent to examination.
 - Officers must include a description of the currency or monetary instruments that became the object of the enforcement action.
 - Where a declaration was made by the subject, a description of the declared goods should also be included.
 - Officers should indicate where declared and undeclared goods were located.
 - Monetary instruments must be described in greater details to ensure reviewers can determine with certainty that they were negotiable
 - e) **How:** The essence of the report will normally consist of the method of operation employed by the importer in committing the violation. The method of concealment,

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the use of false documentation, the method of transport, would all be pertinent facts to include.

f) Why:

- In most cases, the motive for the unlawful importation will be the evasion of revenue and although it may be obvious to mention this as the reason for the contravention, mentioning the actual amount of revenue evaded may assist an adjudicator to understand the justification for the seizure and the terms of release that were offered
- In some cases, non-report of currency and monetary instruments may be justified by the traveller's lack of understanding of the reporting requirements. Regardless, it is still important to include the reason for choosing the particular level of contravention in the narrative report as it may assist an adjudicator in understanding the rationalization for the enforcement action

Note: When dealing with Level 4 seizures:

- Officers must indicate whether the RCMP or local police attended
- Officers must provide written details of the indicators observed justifying that they suspect proceeds of crime
- Should the funds be transferred to the responding police agency, officers must document the steps followed and provide the transferring details including a copy of the Exhibit Control Form (K129) via email to the Programs Branch at the following address: cbcr.dmte@cbsa-asfc.gc.ca

Superintendents will:

190. Ensure that BSOs are afforded sufficient time/opportunity to complete seizure documentation and narrative reports within the established timeframes;
191. Review all seizures within five working days after seizure reports are completed to ensure that no errors have been made, that narrative reports accurately reflect the occurrences, and that all documentation is included in the seizure package;
192. Ensure that review results are documented in the "Seizure review" facility in ICES
193. If directly involved in an enforcement action, the superintendent will complete a narrative report; this is particularly important in the event of a significant seizure or cases that could potentially result in prosecution.

PCMLTFA Seizures (Manual)

Note: A seizure form (K19C) has been developed to include information regarding the PCMLTFA. The K19C will allow the officer to select the appropriate currency

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allegation and commodity. A form K19C-1 Currency Inventory Sheet has also been developed. See Appendix A for examples of both forms.

194. If the K19C is not available, write the following allegation on the seizure documentation (K19S):

"The said currency or monetary instruments are seized under subsection 18(1) of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act because they were not reported contrary to the provisions of subsection 12(1) of that Act."

195. Ensure that subsection 12(1) of the PCMLTFA is also written on the K19S:

"Proceeds of Crime (Money Laundering) and Terrorist Financing Act 12(1). Every person or entity referred to in subsection (3) must report to an officer, in accordance with the regulations, the importation or exportation of currency or monetary instruments of a value equal to or greater than the prescribed amount."

196. Write in the commodity as either:

- a) Currency or Monetary Instruments (for levels 1-3); or
- b) Suspected Proceeds of Crime (for No Terms of Release).

197. Complete the form K19C-1, Currency Inventory Sheet.

198. Fax the completed K19C and the K19C-1 to the Information Sharing Section at (613) 952-4145 for input into ICES.

Establishing Suspected Proceeds of Crime Criteria under the PCMLTFA

Note: Appendix D provides guidance to BSOs on indicators frequently observed during the seizure of currency or monetary instruments that are suspected proceeds of crime or funds for the financing of terrorist activities.

- 199. Bearing in mind the definitions of proceeds of crime and reasonable grounds, officers must seize as forfeit suspected proceeds of crime or terrorist finances.
- 200. BSOs must have questioned the traveller in regards to the currency or monetary instruments in order to proceed with the forfeit under the *PCMLTFA*.
- 201. As the seizing officer, take notes of all reasonable grounds.
- 202. A CPIC check should be conducted for all suspected proceeds of crime seizure.

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203. Intelligence support procedures established in each region must be followed to determine whether the seized funds are required by the police for use in criminal proceedings;
204. The seizing officer must follow report writing and transferring procedures specific to Level 4 seizures outlined in paragraph 187.
205. When currency or monetary funds are transferred to the police, local management must ensure that the funds are returned to the CBSA to be disposed of according to the procedures set out in the *PCMLTFA*

Establishing Proceeds of Crime Criteria Under the *Criminal Code*

206. Border Services Officers (BSO's) who come across currency or monetary instruments under the reporting threshold or that have been reported under the *PCMLTFA*, but establish reasonable grounds to **believe** that they have proceeds of crime or terrorist finances, are to contact their IPOC unit or their Regional Intelligence office. The funds cannot be seized under the *PCMLTFA*, but could be seized under sections 83.03, 354, or 462.31 of the *Criminal Code*
207. Seizures under the *Criminal Code* often involve a lengthy investigation. The physical seizure of the currency normally follows only after such an investigation. The IPOC unit or Regional Intelligence office will be able to advise the officer on a case-by-case basis.
208. An arrest for laundering proceeds of crime will only occur under the guidance of the IPOC unit or Regional Intelligence office. Should the circumstance warrant, an arrest would be made under the authority of subsection 495(1) of the *Criminal Code*. Only a designated officer at a designated port of entry may make the arrest.

Note: A designated officer may only detain an individual for a short period until custody can be transferred to the police. For more information, please refer to Part 6, Chapter 1(Arrest and Detention) of the Enforcement Manual

209. Currency or monetary instruments seized under the *Criminal Code* will not be placed on customs seizure documentation (K19). The currency or monetary instruments will be recorded on an E352 – Evidence Seizure Receipt. The BSO will write on the E352 that the currency or monetary instruments are being held as “suspected proceeds of crime”.
210. The BSO will also complete a K129 Evidence Control Form. The BSO will cross out the reference that the goods are seized under the *Customs Act* and write in “suspected proceeds of crime”.
211. When the currency or monetary instruments are transferred to IPOC or the police, the E352 will be cancelled with the K129 number. The E352 may be given to the person

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from whom the currency was seized as a receipt.

212. For detailed processes regarding arrest and seizure under the *Criminal Code*, refer to the policy and procedures for *Criminal Code* offences in the Enforcement Manual, Part 6, Chapter 7.
213. All actions involving “laundering proceeds of crime” will be reported to the Programs Branch by sending an email to cbcr.dmte@cbsa-asfc.gc.ca

Suspending Monetary Instruments

214. In order to protect the value of the seized monetary instruments, suspend the items by immediately notifying the appropriate financial institution by telephone.
215. For travellers’ cheques, provide the financial institution with the following information:
 - a) serial numbers;
 - b) quantity of checks by denomination;
 - c) date and place of purchase;
 - d) name of CBSA contact; and
 - e) inform them that the PCMLTFA has been violated.

Note: Major Companies Issuing Travelers Cheques, with 24-Hour service:

American Express 1-800-525-7641
Bank of America 1-415-241-3491
Citicorp 1-800-645-6556
MasterCard 1-800-223-9920
Thomas Cook Bankers 1-800-223-7373 or 212-921-3677
VISA International 1-800-227-6811

216. Do not release the name of the purchaser and/or the person from whom the monetary instruments were seized to the financial institution.
217. Include the time and name of the person notified at the issuing bank or other financial institution in your notes.
218. For all other monetary instruments, contact Programs Branch for guidance at: cbcr.dmte@cbsa-asfc.gc.ca.

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Transferring Procedures

219. The Receipt and Deposit of Public Money Regulations requires that the terms of release of currency seizure and the forfeited currency be deposited promptly to a CBSA bank account to the credit of the Receiver General. They will respectively be recorded to revenue code 8702 (level 1, 2, 3) and 8701 (forfeit, level 4) during the K10 process (Customs Revenue Report).

Note: A summary of deposits into General Revenue, for the Cross Border Currency Reporting program, must be provided on a monthly basis to CBSA Finance.

220. If it is not already notated on K-10 form, write the seizure reference number and file with the seizure reports.
221. CBSA Finance and PWGSC/SPM will proceed with an interdepartmental settlement (IS) to transfer the funds.
222. For forfeited currency other than in Canadian or American dollars, make reasonable efforts to convert the amount in Canadian funds.
223. If a commercial bank charges a fee for counting or converting the currency, pay the fee from the seized amount. In reporting the seized currency, report the net amount, and specify the amount of the fee paid to the commercial bank.
224. Send forfeited monetary instruments to PWGSC/SPM by courier.
225. If the instruments are blank in the "pay to" field, make them out to the Receiver General for Canada.
226. If there are various monetary instruments with different information on each one, contact the Programs Branch by sending an email to cbr.dmte@cbsa-asfc.gc.ca for details prior to transferring them to PWGSC/SPM.
227. Seized monetary instruments and non-exchangeable currency that could not be deposited by the CBSA and transferred through the IS process for any reason, are to be sent to PWGSC/SPM at:

Public Works and Government Services Canada
Seized Property Management Directorate
12C1, Place du Portage, Phase III
11 Laurier Street
Gatineau, Québec
K1A 0S5

228. Ensure the courier shipment requires a signature on both ends of delivery.

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229. Keep a copy of the courier bill of lading with the seizure records.
230. When a seizure is recorded in ICES, the transfer will be noted in the appropriate disposition field. When the seizure and disposition occur simultaneously, and recorded in ICES, the Currency Coordinator will be considered to have been notified.
231. When a seizure is recorded manually, or when currency/monetary instruments is transferred to PWGSC/SPM or to another entity (Police), the officer will notify the Programs Branch by sending an email to cbcr.dmte@cbsa-asfc.gc.ca referencing:
- a) date of the seizure/retention;
 - b) date of transfer;
 - c) seizure/reference number;
 - d) amount transferred;
 - e) type of currency;
 - f) method of transfer (i.e. courier); and
 - g) name of the responsible officer.
232. Print and file a copy of the electronic message to the Programs Branch with the physical seizure reports at cbcr.dmte@cbsa-asfc.gc.ca .

Amendments to Reports

233. When a report is to be modified:
- a) amend the original currency report with the corrected data;
 - b) ensure the person making the report initials the changes;
 - c) note the circumstances of the discrepancy in the comments field of the currency report; and
 - d) ensure you make personal notes regarding the details of the situation.

Note: Acceptance of the reports fulfills the reporting requirements of the individual/courier/transporter. No further documentation will be required.

Note: CBSA officers have the discretionary power to allow persons or entities to amend their currency reports. Where the situation warrants the officer may commence with seizure action or the officer may choose to modify the currency report.

234. If you do not feel a secondary examination or verification is required, release the individual/courier/transporter.

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Currency Report Forms

235. Forms are to be treated as Protected B and must be forwarded in accordance with the Transmittal by Mail of Sensitive Information Checklist.

236. Forward all reports received to the Programs Branch through inter-office mail in a reusable envelope or by first class mail using a single gum-sealed envelope with no security marking where interoffice mail is not available. Note: The data will be captured and forwarded by the CBSA to FINTRAC.

Note: Reports for sums under the legislative requirement of \$10,000 CAD or its equivalent in foreign currency are not to be forwarded.

237. Batch reports weekly and forward them via inter-office mail to:

CBSA/FINTRAC Data Entry
Strategic Planning and Financial Management Unit
Program Performance and Reporting Division
17th Floor Sir Richard Scott Building
191 Laurier Avenue West
Ottawa, ON K1A 0L8

REFERENCES

The Proceeds of Crime (Money Laundering) and Terrorist Financing Act

Cross-Border Currency and Monetary Instruments Reporting Regulations

Customs Act

Immigration and Refugee Protection Act

Criminal Code of Canada

Comptrollership Manual, Finance Volume

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**CROSS-BORDER CURRENCY AND MONETARY
INSTRUMENTS REPORTING POLICY AND PROCEDURES**

Part 2

ENFORCEMENT PRIORITIES

Chapter 2

**CROSS-BORDER CURRENCY AND MONETARY INSTRUMENTS
REPORTING POLICY AND PROCEDURES**

Appendix A

SEIZURE RECEIPT CURRENCY AND MONETARY INSTRUMENTS (K19C)

AND

CURRENCY INVENTORY SHEET (K19C-1)

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CROSS-BORDER CURRENCY AND MONETARY INSTRUMENTS REPORTING POLICY AND PROCEDURES

Canada Border
Services Agency

Agence des services
frontaliers du Canada

**PROTECTED
PROTÉGÉ**

B when completed
une fois rempli

**SEIZURE RECEIPT
CURRENCY AND
MONETARY INSTRUMENTS**

Restore - Restaurer

**SAISIE DOUANIÈRE
ESPÈCES ET EFFETS**

Help Aide

The information contained in this form is subject to the Access to Information Act / L'information contenue dans ce formulaire est soumise à la Loi sur l'accès à l'information.

Seizure no. - N° de saisie	Date YYYY - AAAA MM DD - JJ	CBSA office - Bureau de l'ASFC
Last name, first name, middle names - Nom de famille, prénoms		
Address (street, city, province and postal code) - Adresse (rue, ville, province et code postal)		Service mode - Type de signification In person En personne Mail Postal
		Date YYYY - AAAA MM DD - JJ

The said currency or monetary instruments are seized under subsection 19(1) of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, because they were not reported contrary to the provisions of subsection 12(1) of that Act.

Lesdits effets et espèces sont saisis en vertu du paragraphe 19(1) de la Loi sur le recyclage des produits de la criminalité et le financement des activités terroristes, parce qu'ils n'ont pas été déclarés conformément aux dispositions du paragraphe 12(1) de la loi.

STATEMENT OF CURRENCY AND/OR MONETARY INSTRUMENTS SEIZED		COMPTÉ RENDU DES ESPÈCES ET/OU DES EFFETS SAISIS	
	Country of issue Pays d'origine	Amount - Montant	CAD rate for conversion Taux de conversion CAN
Currency and coins Espèces et monnaie			\$
Other monetary instruments Autres effets			\$
Totals Totaux			\$

PENALTY INFORMATION		INFORMATION CONCERNANT LA PÉNALITÉ	
<input type="checkbox"/> Level 1 Niveau 1	\$250	<input type="checkbox"/> Level 2 Niveau 2	\$2500
<input type="checkbox"/> Level 3 Niveau 3	\$5000	<input type="checkbox"/> Retained as forfeit Aucune condition de mainlevée	
Amounts received - Montants reçus	Total	Receipt no. - N° du reçu	

RIGHT OF APPEAL

Right to request a Minister's decision

If you, or the lawful owner of the currency or monetary instruments, wish to file an objection to this enforcement action and request a decision of the Minister of Public Safety, you must give notice in writing to the officer who took the enforcement action or to an officer at the CBSA office closest to the place where the enforcement action was taken. This request must be filed within 90 days after the date the enforcement action was taken.

A person who requests a decision of the Minister may, within 90 days after being notified of this enforcement action and request a decision of the Minister of Public Safety. In which the person is the plaintiff and the Minister is the defendant.

Third party claims

If you are aware of any persons or entity, with the exception of the above named, that may have an interest as owner or, in Quebec a right as owner or trustee of the currency or monetary instruments seized, please advise them to apply by notice in writing to the Court within 90 days after the seizure.

DRIT D'APPEL

Droit de demander au ministre de rendre une décision

Si vous, ou le propriétaire légitime des espèces ou des effets, souhaitez déposer une opposition à cette mesure d'exécution et demander au ministre de la Sécurité publique de rendre une décision, vous devez donner un avis par écrit à l'agent qui a appliqué la mesure d'exécution à un agent au bureau de l'ASFC le plus près de l'endroit où la mesure d'exécution a été prise.

La demande doit être déposée dans les 90 jours après la date où la mesure d'exécution a été prise. Une personne qui demande au ministre de rendre une décision peut, dans les 90 jours après avoir été avisée de la décision, appeler d'une décision par voie d'une action devant la Cour fédérale ou l'individu est le demandeur et le ministre est le défendeur.

Réclamations des tiers

Si vous connaissez toute personne ou entité, à l'exception des noms susmentionnés, qui pourrait avoir un intérêt en qualité de propriétaire ou, au Québec en qualité de propriétaire ou de fiduciaire des espèces ou des effets saisis, veuillez les aviser par avis de requête à la Cour dans les 90 jours après la saisie.

CBSA office (Name, address and telephone No.) - Bureau de l'ASFC (Nom, adresse et n° de téléphone)

Seizing officer - Agent de saisie

Narrative report - Rapport circonstancié

Signature of seizing officer - Signature de l'agent de saisie

☐ Level
Niveau
☐ P.A.R.O.
S.A.R.J.

K190 (12)

CLIENT COPY - COPIE CLIENT

Canada

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CROSS-BORDER CURRENCY AND MONETARY
INSTRUMENTS REPORTING POLICY AND PROCEDURES



Canada Border Services Agency
Agence des services frontaliers du Canada

CROSS-BORDER CURRENCY REPORTING PROGRAM - CURRENCY INVENTORY SHEET
PROGRAMME DE LA DÉCLARATION DES MOUVEMENTS TRANSFRONTALIERS DES ESPÈCES -
FEUILLE D'INVENTAIRE DES ESPÈCES

Seizure Number - Numéro de saisie	Date	Time - Heure	Page
Port - Bureau		Officers - Agents	

Canadian - Canadien			U.S. - Américain		
Bills - Billets	Bill count - Nombre de billets	Total Value - Valeur totale	Bills - Billets	Bill count - Nombre de billets	Total Value - Valeur totale
5	X		1	X	
10	X		2	X	
20	X		5	X	
50	X		10	X	
100	X		20	X	
1000	X		50	X	
Other - Autre	X		100	X	
Other - Autre	X		1000	X	
		Change Monnaie			Change Monnaie
		Total			Total
					Exchange Rate - Taux de change
					Total CAD

Other Currency - Autres devises			Other Currency - Autres devises		
Specify - Spécifiez			Specify - Spécifiez		
Bills - Billets	Bill count - Nombre de billets	Total Value - Valeur totale	Bills - Billets	Bill count - Nombre de billets	Total Value - Valeur totale
	X			X	
	X			X	
	X			X	
	X			X	
	X			X	
		Change Monnaie			Change Monnaie
		Total			Total
		Exchange Rate - Taux de change			Exchange Rate - Taux de change
		Total CAD			Total CAD

Monetary Instrument - Effets					
Type of Instrument - Type d'effet	Currency - Devise	Amount - Nombre	Value - Valeur	Exchange Rate - Taux de change	Total CAD
		X \$			
		X \$			
		X \$			
				Total CAD	

K19C-1 (08)

BSF484



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Part 2

ENFORCEMENT PRIORITIES

Chapter 2

**CROSS-BORDER CURRENCY AND MONETARY INSTRUMENTS
REPORTING POLICY AND PROCEDURES**

Appendix B

**Confirmation of the Return of Seized Currency and/or Monetary Instruments Upon
Payment of Penalty**

Protected once completed

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**CROSS-BORDER CURRENCY AND MONETARY
 INSTRUMENTS REPORTING POLICY AND PROCEDURES**

**Confirmation of the Return of Seized Currency and/or Monetary Instruments
 Upon Payment of Penalty**

The following statement is to be filled out and signed by the seizing officer or supervisor and the person or representative of the entity in whose hands the currency/monetary instruments were seized.

I, _____, confirm that my seized currency and/or monetary (Client
 name)
 instruments (_____): _____, in the
 (Type) (Seizure #)
 amount of _____, have been returned in full, upon payment (Seized
 amount - including currency code)
 of penalty in the amount of _____.
 (Penalty amount)

Person/authorized representative of entity: _____ Date: _____

CBSA Officer : _____ Badge Number: _____ Date: _____

Upon completion, one copy is to be given to the client/authorized representative and one copy is to be kept on file.

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**CROSS-BORDER CURRENCY AND MONETARY INSTRUMENTS REPORTING
POLICY AND PROCEDURES**

Appendix C

CURRENCY CHECKLISTS

EN Part 2 Chapter 2 Cross-Border Currency and Monetary Instruments Reporting

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**CROSS-BORDER CURRENCY AND MONETARY
INSTRUMENTS REPORTING POLICY AND PROCEDURES**

APPENDIX C

**Cross-Border Currency Reporting (CBCR) Program
Seizure Checklist**

For Currency or Monetary Instruments

When currency or monetary instruments are released on payment of penalty (level 1, 2, or 3), the following checklist is to be completed and included on file:

Copy of the K19 or K19C to be included on file. K19/K19C#: _____	Yes	No
Superintendent notification as per Enforcement Manual Part 2, Chapter 2, Par. 126(c). Superintendent Name: _____ Badge #: _____	Yes	No
Copy of the Confirmation of the Return of Seized Currency and/or Monetary Instruments Upon Payment of Penalty letter to be completed and signed by the seizing officer or supervisor as well as the subject, and included on file.	Yes	No
Copy of the K21 generated upon payment of penalty is included on file. K21#: _____	Yes	No
When the penalty amount collected is deposited into general revenue (under financial coding number 8702), a copy of the K10 is included on file as per Enforcement Manual Part 2, Chapter 2, Par.203. K10#: _____	Yes	No

Superintendent Signature Badge #

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EN Part 2 Chapter 2 Cross-Border Currency and Monetary Instruments Reporting

APPENDIX C

**Cross-Border Currency Reporting (CBCR) Program Seizure Checklist
For Suspected Proceeds of Crime**

When currency or monetary instruments are seized as suspected proceeds of crime (level 4), the following checklist is to be completed and included on file:

Copy of the K19 or K19C to be included on file. K19/K19C#: _____	Yes	No
Superintendent notification as per Enforcement Manual Part 2, Chapter 2, Par. 126(c). Superintendent Name: _____ Badge #: _____	Yes	No
Seized currency / monetary instruments counted in the presence of a second officer, as per EN Manual Part 2, Chapter 2, par. 159. Officer Name: _____ Badge #: _____	Yes	No
Notify an RIO, as per EN Manual Part 2, Chapter 2, par. 188. RIO Name: _____ Badge #: _____	Yes	No
If the currency and/or monetary instruments are temporarily transferred to the RCMP or a police force, a copy of the K129 is included on file upon transfer. K129#: _____ Please check the appropriate box when the currency and/or monetary instruments is returned by the RCMP or police force	Release	Return
	Yes No N/A	Yes No N/A

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**CROSS-BORDER CURRENCY AND MONETARY
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If the seizure contains monetary instruments, the financial institution needs to be contacted in order to place a hold on them and preserve their value, as per EN Manual Part 2, Chapter 2, par. 197. Please check the appropriate box, if you have contacted the financial institution.	Yes	No
If the currency and/or monetary instruments are to be deposited into general revenue (under financial coding number 8701), a copy of the K10 is included on file as per Enforcement Manual Part 2, Chapter 2, Par.203. K10#: _____	Yes	No
If the currency and/or monetary instruments are to be forwarded directly to PWGSC/SPM by the port, the courier bill of lading is included on file, as per EN Manual Part 2, Chapter 2, par. 212. Ref#: _____	Yes	No
Notify the Cross-Border Currency Reporting Program coordinator by email, as per EN Manual Part 2, Chapter 2, par. 214.	Yes	No

Superintendent Signature Badge #

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**CROSS-BORDER CURRENCY AND MONETARY INSTRUMENTS REPORTING
POLICY AND PROCEDURES**

**Appendix D
Suspected Proceeds of Crime Indicator Guidelines**

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CROSS-BORDER CURRENCY AND MONETARY INSTRUMENTS REPORTING POLICY AND PROCEDURES

Actions required:

BSOs are encouraged to apply their knowledge, insight, judgement, and intuition in the independent analysis of each specific case. However, the following frequently observed indicators can be used as a reference tool.

The individual may:

Once the currency is discovered:

Other indicators include, but are not limited to:

Please note that the **multiplicity of indicators** is often more relevant in suspected proceeds of crime currency seizures.

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Firearms and Weapons

CBSA ENFORCEMENT MANUAL

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Chapter 3

FIREARMS AND WEAPONS

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POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to control the importation of firearms, weapons and other devices, in order to ensure compliance with Tariff Item No. 9898.00.00, as well as the *Firearms Act* and the *Criminal Code*.

DEFINITIONS

2. Refer to Part 11 - Glossary.

AUTHORITIES

Customs Act

3. Section 11 of this Act requires every person arriving in Canada to report to a CBSA officer and to answer truthfully any question asked by the officer in the performance of his or her duties under this Act or any other Act of Parliament.
4. Section 12 requires all goods imported into Canada be reported to the CBSA.
5. Subsection 99(1) authorizes the examination of any goods and conveyances that a CBSA officer suspects on reasonable grounds to contain goods that are in contravention of the Act.
6. Section 101 authorizes the detention of controlled goods that have been imported or are about to be exported. The officer may release the goods once he or she is satisfied that the goods have been dealt with in accordance with this Act, and any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods.
7. Section 107 authorizes the disclosure of customs information to certain prescribed persons.
8. Section 110 stipulates that an officer may, on reasonable grounds, seize goods involved in a contravention of the *Customs Act* as well as the conveyance used in the contravention.
9. Section 159 stipulates that it is an offence to smuggle or attempt to smuggle any goods subject to duties, or any goods the importation of which is prohibited, controlled, or regulated by or pursuant to this or any other Act of Parliament.

10. Section 160 stipulates that a person who contravenes specific provisions of the *Customs Act*, for example weapon smuggling, is guilty of an indictable offence and liable to a fine and/or imprisonment or an offence punishable by summary conviction and liable to a fine and/or imprisonment.

Customs Tariff

11. Section 136 stipulates that all goods enumerated or referred to in tariff item no. 9898.00.00 are prohibited entry into Canada. This includes firearms, prohibited weapons, restricted weapons, prohibited devices, prohibited ammunition and components or parts designed exclusively for use in the manufacture of or assembly into automatic firearms.

Firearms Act

12. Section 2 provides definitions of terms used in the *Firearms Act*.
13. Sections 43 through 53 explain the mechanisms and/or restrictions for which a business may export or import a firearm, prohibited weapon, restricted weapon, prohibited device, component or part designed exclusively for use in the manufacture of or assembly into an automatic firearm or prohibited ammunition.

Criminal Code

14. Sections 2 and 84 provide the legal definitions of firearms, weapons, and terms related therein.
15. Section 88(1) states that it is an offence to carry or possess a weapon, an imitation of a weapon, a prohibited device or any ammunition or prohibited ammunition for a purpose dangerous to the public peace or for the purpose of committing an offence.
16. Section 91(1) states that it is an offence to possess a firearm without a licence and a registration certificate.
17. Section 100(1) states that it is an offence to possess a firearm for the purpose of trafficking, knowing that the person is not authorized to do under the *Firearms Act* and any other Act of Parliament.
18. Section 103(1) states that it is an offence to import or export without authorization a firearm, a prohibited weapon, a restricted weapon, a prohibited device or any prohibited ammunition, or any component or part designed exclusively for use in the manufacture of or assembly into an automatic firearm.

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Firearms and Weapons

19. Section 117.11 states that any question arising as to whether a person is the holder of an authorization, a licence or a registration certificate, the onus is on the accused to prove that the person is the holder of the authorization, licence or registration certificate.

PURPOSE AND SCOPE

20. The purpose of this policy is to guide CBSA officers in the interdiction of prohibited or restricted firearms, weapons, and other devices and outline the appropriate enforcement mechanisms available under the *Customs Act* and other Acts of Parliament.
21. This policy does not cover instructions that determine the admissibility of firearms and weapons and the adequate documentation required. For such instructions refer to D19-13-2 Importing and Exporting Firearms, Weapons, and Devices – *Customs Tariff, Criminal Code, Firearms Act, and Export and Import Permits Act*.
<http://www.cbsa-asfc.gc.ca/publications/dm-md/d19/d19-13-2-eng.html>
22. This policy applies to all CBSA officers in all modes of transportation.

POLICY GUIDELINES

23. Firearms and weapons are high-risk commodities and their interdiction is therefore a CBSA enforcement priority.
24. Prohibited and restricted firearms, weapons, and devices are defined and outlined in D19-13-2 Importing and Exporting Firearms, Weapons, and Devices as well as in the glossary of this manual. D19-13-2 also provides detailed information regarding detention and release procedures.
25. CBSA officers have many tools at their disposal to control the import and export of inadmissible firearms and weapons and must choose the appropriate action, depending on the circumstances.
26. Officers not trained or equipped to use duty firearms are expected to seize and safely handle firearms encountered in the normal course of their duties.
27. Seizure of any undeclared firearm is warranted when the traveller was given the opportunity to declare the firearm by completing a declaration card or by responding to questioning, and did not declare it.

28. Seizure of any other undeclared weapon deemed prohibited, such as mace, pepper spray, or knives is warranted when it has been established that the traveller knew of its prohibited status and understanding this, did not declare it.
29. To establish this knowledge factor, the CBSA officer, as part of the primary examination, will specifically ask the traveller if he/she is carrying any weapon such as pepper spray, mace or knives and advise them of the prohibited status of such weapons. In many instances, travellers may not realize that certain items are prohibited and they are not intentionally trying to smuggle them into Canada.
30. When a prohibited weapon is declared in response to the questioning, or to the information about the prohibited status of weapons such as pepper spray, mace or knives, the item is considered declared and may be detained rather than seized.
31. When a firearm is declared in response to questioning, a restricted or prohibited firearm may then be detained rather than seized.
32. When the importer was not questioned, but subsequent examination reveals a weapon or firearm, an officer may extend the benefit of the doubt to that person unless there are specific reasons to indicate that he or she intended to smuggle the item into Canada.
33. When seizure action is unwarranted, it is nonetheless advisable that individuals be informed about legislation concerning prohibited firearms and weapons. The inadmissible weapons/firearms may be detained in accordance with Memorandum D19-13-2.
34. A CBSA office may hold inadmissible detained weapons/firearms to be later returned, depending on the circumstances. For example, a recently purchased firearm may be held on a K24 for a maximum of 40 days while a resident who holds a firearms licence attempts to obtain the appropriate documentation.
35. There are no terms of release for seized prohibited or restricted firearms or weapons. Firearms, which are **not** classified as prohibited or restricted (mainly long rifles and shotguns) may be offered for release provided the person has the required documentation.
36. When seized weapons or firearms are imported for commercial purposes, an administrative monetary penalty may also be applied. The regional Investigations office should be contacted and they will review the case for possible investigation and prosecution (See Part 9, Chapter 2, Investigations Procedures).

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Firearms and Weapons

37. A conveyance penalty may be applied to the traveller who has used his/her conveyance to contravene the *Customs Act*. If the conveyance was modified and used for smuggling purposes, there are no terms of release.

Arrest/Prosecution

38. A number of cases involving undeclared weapons or firearms may not involve an arrest and/or subsequent prosecution.
39. When a traveller has been arrested for *Customs Act* offences related to firearms or prohibited weapons, Investigations is to be notified for possible prosecution.
40. Prosecution may be considered pursuant to the *Criminal Code* and/or the *Customs Act*. Investigations will consult local police to decide and determine the best approach according to the circumstances.

Allegation

41. Normally, the allegation for a seizure is “non-report”.
42. When seizing a shipment that has been declared as containing toy guns, and where the CBSA officer suspects them to be prohibited replica firearms (i.e. officer believes the importer/exporter had the intention to circumvent the law rather than simply a classification error) the officer should use the allegation “untrue statements”. “Non-report” may not be upheld under appeal because the goods were in fact reported.
43. If there is a probability of prosecution, the allegation will be that of “smuggling”.

Sources for determining the status of a firearm or weapon

44. For information determining the status of a weapon or firearm and for information on the documentation required, CBSA officers should refer to memorandum D19-13-2 Importing and Exporting Firearms, Weapons, and Devices.

ROLES AND RESPONSIBILITIES

CBSA Officers

45. CBSA officers are responsible for:
- a) questioning travellers about firearms and weapons;

- b) observing, targeting, selecting, and examining conveyances, baggage, goods, and commercial shipments for firearms and weapons when reported to the CBSA;
- c) detecting and intercepting prescribed materials or devices, such as explosives or firearms and prevent their importation into or transit through Canada;
- d) liaising with the regional intelligence officers and Investigations;
- e) arresting persons attempting to smuggle weapons or firearms into or out of Canada, in accordance with Section 495 of the *Criminal Code*;
- f) being aware of current trends, modus operandi, concealment methods, unusual routings, etc. as they pertain to firearms and weapons and source countries;
- g) awareness, recognition, collection and submission of information valuable for intelligence gathering purposes;
- h) thoroughly reviewing all lookouts, alerts, and targets;
- i) handling exhibits properly and ensuring that adequate custody of the item is maintained;
- j) duly completing all necessary arrest and seizure documentation (including the K153 Significant Seizure Reports and IMS Occurrence reports when appropriate); and
- k) collecting and submitting information and evidence for prosecution and providing it to investigations/police.

CBSA Superintendents

46. CBSA Superintendents are responsible for:

- a) ensuring compliance with these policies and procedures;
- b) providing necessary assistance and support to CBSA officers;
- c) ensuring completion and timely dissemination of reports concerning weapons/firearms and smugglers;
- d) ensuring timely circulation of all intelligence reports, lookouts, alerts, and targets;

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- e) ensuring timely contact with Investigations;
- f) sending locally collected intelligence to the Regional Intelligence Officer (RIO); and
- g) taking necessary action when breaches of this policy and/or procedures occur.

Regional Intelligence Officers

47. RIO's are responsible for:

- a) receiving, analyzing, and disseminating intelligence (exercising discretion) in a timely manner on suspected and known weapons smugglers, concealment methods, source countries, etc.;
- b) collecting intelligence information and developing lookouts and alerts;
- c) issuing lookouts and alerts on suspects and known firearms/weapons smuggling related persons, conveyances, shipments, etc.;
- d) providing expertise prior to involvement by another enforcement agency;
- e) maintaining open communication and sharing of information with Investigations, the Royal Canadian Mounted Police (RCMP) and other law enforcement agencies; and
- f) providing notes, reports and other evidence of involvement to Investigations/police in a timely manner and when requested to do so by Investigations/police.

Regional Investigations

48. Regional Investigations is responsible for:

- a) responding to the local CBSA office when contacted after an arrest for a firearms/weapons arrest;
- b) investigating the case, gathering evidence and making a recommendation to the Director of Investigations in the region as to whether or not charges should be laid under the *Customs Act*;

- c) consulting with local police and crown agents as to whether or not charges should be laid under the *Criminal Code* and/or the *Customs Act*; and
- d) liaising with RIO's in gathering of intelligence.

Enforcement Branch

49. The Enforcement Branch is responsible for:

- a) developing, modifying, and approving policies in accordance with the interpretation and application of the *Firearms Act*, the *Criminal Code* and the *Customs Act*;
- b) collecting information and developing intelligence;
- c) issuing lookouts and national alerts to CBSA officers, the US Department of Homeland Security and other foreign agencies on suspected and known firearms/weapons smuggling related persons, conveyances, shipments, etc.;
- d) disseminating lookouts and alerts provided by other countries on suspected and known firearms/weapons smuggling related persons, conveyances, shipments, etc.;
- e) sharing weapon/firearm intelligence with partners; and
- f) providing support to the field.

PROCEDURES

- 50. Ask all non-residents entering Canada, particularly those entering by vehicle from the United States, whether they have in their possession, or in their vehicle, any firearms or other weapons. It is also advisable to ask returning residents, where appropriate, if they have any firearms or other weapons in their possession, or if firearms make up part of their declaration.
- 51. If a traveller has not been specifically questioned about firearms or other weapons, and an undeclared firearm or weapon is subsequently found, do not take seizure action unless there is evidence of intent on the part of the traveller to smuggle the firearm or weapon.
- 52. Be alert to the possibility that a returning resident may have included the value of a firearm or weapon in his or her report but will not have specifically mentioned the firearm or weapon. Before any examination is undertaken,

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the traveller should be questioned as to the nature of the goods included in his/her report and if any weapons are being imported. If weapons are reported as the result of such questioning, they are considered declared and are not subject to seizure.

53. Refer to Customs Memorandum D19-13-2 Importing and Exporting Firearms, Weapons, and Devices, for instructions on processing any weapon or firearm that is being properly declared.
54. If the goods are inadmissible but seizure action is unwarranted, the person may arrange for export.
55. If export is not feasible and seizure not warranted, detain inadmissible firearms and weapons:
 - a) advise the person that the goods are restricted or prohibited in Canada;
 - b) advise that the goods will be held for 70 days (40 days detention, plus 30 days in the unclaimed list) after which they will be disposed of; and,
 - c) provide a K24 receipt.
56. Seize improperly declared firearms and weapons if warranted.
57. Ensure that a full description of the firearm or weapon is indicated on the form K19S. The description should include the type of firearm or weapon (e.g., knife, handgun, rifle, shotgun, etc.), the make, model, serial number and calibre of firearms, the type of action (e.g., revolver or pistol in the case of a handgun, semi-automatic, fully automatic, etc.). This information is needed to facilitate future Police Information Retrieval System (PIRS) input and will assist considerably in the subsequent analysis of firearm and weapons seizures and/or for prosecution purposes as evidence.
58. Consider seizing the conveyance if it was used in the contravention (e.g. gun hidden in the trunk of a car) and the goods are for personal use.
59. Consider issuing an Administrative Monetary Penalty Assessment (AMP) if the goods were imported for commercial purposes.
60. Do not offer terms of release for prohibited or restricted firearms or weapons.
61. Offer terms of release for weapons/firearms that are not classified as prohibited or restricted if the person has the required permits. Terms of release equal 25, 40 or 55 per cent of the value for duty, depending on the level of the contravention.
62. When a conveyance seizure is applicable:

- a) offer terms of release for the conveyance of either 50 per cent or 100 per cent of the terms offered for the firearm, depending on the level of contravention, if the firearm is not restricted or prohibited;
- b) offer terms of release for the conveyance of either \$1000 for each firearm for a first contravention, \$2000 per firearm for second contraventions and \$3000 per firearm for third and subsequent contraventions, if the firearm is restricted or prohibited;
- c) offer terms of release of a sum of \$500 per weapon seized if the item is a prohibited weapon other than a firearm (e.g. switchblade knife);
- d) offer terms of release of a sum of \$500 per commodity group seized for prohibited ammunition, prohibited devices (e.g. handgun barrel, silencer, large-capacity magazine, replica firearm) or components or parts designed exclusively for use in manufacturing or assembling automatic firearms; or
- e) offer terms of release for the conveyance in the normal manner applicable to undeclared goods if it is an undeclared rifle and shotgun.

Note: Officers are encouraged to use reasonable discretion when seizing conveyances if the restricted or prohibited weapon is not a firearm (e.g. switchblade knife, *shuriken*, etc.). However, there may be instances where it is preferable to take further deterrent action in addition to seizing the weapon. This may occur in instances where there is evidence of intent on the part of the traveller to smuggle the weapon.

- 63. Even if terms of release are paid, do not release any seized weapon or firearm until all required permits and certificates are provided. Also, do not release if Investigations advises that the weapon or firearm is to be kept as evidence.
- 64. Advise the RIO of any significant seizure of firearms and/or weapons.
- 65. Advise Investigations when the traveller has been placed under arrest.
- 66. When referral criteria are met, it is advisable (based on officer discretion) that the person in question be arrested pursuant to Section 495 of the *Criminal Code* for having contravened Section 159 of the *Customs Act* (smuggling).

Note: See Part 6 Chapter 1, Arrest and Detention.

- 67. Notify the applicable prosecuting agency (CBSA Investigations and/or local police), which will either arrive to take custody of the firearm/weapon and the person or will advise the CBSA officer to release the person.

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68. If the traveller is not being arrested but the seizure is being executed nonetheless, inform the traveller that the seizure is a civil action under the *Customs Act*. The fact that criminal charges have not been laid does not affect the seizure of the goods in question.
69. Record in the notebooks the actual time of arrest and the time at which the advice regarding counsel and the caution were provided.
70. Photograph any novel or unique methods of concealment for intelligence and photograph all concealment as evidence for criminal prosecution.
71. Forward copies of photographs and negatives (where possible) with the seizure reports to the RIO. The RIO may send the photographs to the Enforcement Branch for intelligence gathering purposes. Provide the photographs to the Investigator who responded to the port of entry as the photograph will be used as evidence in the prosecution.
72. Complete a K153 Significant Seizure Report if applicable.
73. Be prepared to provide evidence for the Crown and support to the prosecuting agency (CBSA Investigations and/or local police) if the need arises.
74. Where possible, all firearms and weapons that have been seized, detained or held for export are to be sealed in exhibit envelopes (Evidence Bags and Labels — forms R 635 and R 636). The label portion of the envelope should state the officer's initials and badge number, the date, time and place of action, the suspect or owner's name, the appropriate seizure, exhibit or K24 reference number. Firearms and weapons that cannot be placed in exhibit envelopes should be controlled by completing and attaching an E360 Evidence and Seizure Label.
75. Whenever a firearm or weapon is being turned over to prosecuting agency for use as an exhibit in a court proceeding, list the item on form K129, Exhibit Control. The officer receiving the exhibit will sign and date each copy of the form in the space provided. The officer who witnesses the transfer will also initial each copy in the appropriate space. The original of the form should then be attached to the exhibit or the evidence bag; the second copy given to the receiving officer and the third copy should be placed with the Customs file relating to the goods.
76. During criminal proceedings, a form K128 Notice should be attached to the exhibit before it is placed in the evidence bag. This notice serves to alert the judge that the exhibit has been seized under the *Customs Act*. It does not prevent a judge from making an order under the *Criminal Code* and, if such an order is made, it must be complied with. In such instances, a copy

of the court order is to be attached to the seizure file and an additional copy forwarded to the Recourse Directorate.

77. In addition, complete form K127, Notice to Crown Counsel, and attach to the case reports given to the Crown Counsel. This notice explains the provisions of the *Customs Act* in greater detail than the Form K128.
78. For detailed information on the storage, control and disposal of goods, please refer to the Comptrollership Manual, Material Management Volume:

Control of Seized, Detained, Abandoned and Forfeited Goods:
[Policy](#) [Guidelines](#)

Disposal of Seized, Detained, Abandoned and Forfeited Goods:
[Policy](#) [Guidelines](#)

Handling of Firearms

79. To ensure officers own safety, as well as that of others in the area, it is imperative that officers become aware of the various types of firearms that may be encountered and the proper methods of handling them.
80. The CBSA does not require that officers handle firearms. If an officer does not feel comfortable handling firearms, or is unsure as to how to handle a particular firearm, the officer is required to secure the weapon and summon the assistance of someone who is familiar with it.
81. For general guidelines on handling a firearm see Customs Memorandum D19-13-2 at
<http://www.cbsa-asfc.gc.ca/publications/dm-md/d19/d19-13-2-eng.html>

REFERENCES

82. *Customs Act*
Customs Tariff
Criminal Code
Firearms Act
Canada Evidence Act
D19-13-2 Importing and Exporting Firearms and Weapons

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Jewellery and Watches

CUSTOMS ENFORCEMENT MANUAL

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Chapter 5

JEWELLERY AND WATCHES

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Jewellery and Watches

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to administer its responsibilities with respect to jewellery in accordance with the provisions set out in the *Customs Act*, the *Customs Tariff* and the *Excise Tax Act*.

DEFINITIONS

2. Refer to Part 11 – Glossary

AUTHORITIES

Customs Act

3. Sections 48 to 53 - Explain how the value of goods is determined.
4. Section 98 - Stipulates that officers have the authority to search any person who has arrived in Canada, or who is about to leave Canada, if the officer has reasonable grounds.
5. Section 99 - Stipulates that officers have the authority to examine goods by opening, or causing to be opened, any container or package and may take a reasonable amount as a sample.
6. Section 101 - Authorizes officers to detain goods, which have been imported, or that are intended for export, until such time that the officers are satisfied that the goods have been dealt with in accordance with the *Customs Act* and any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods, and any regulations made there under.
7. Paragraph 109.1(1) - Every person who fails to comply with any provision of an Act or a regulation designated by the regulations made under subsection (3) is liable to a penalty of not more than twenty-five thousand dollars, as the Minister may direct.
8. Section 110 stipulates that an officer may, with reasonable grounds, seize goods involved in a contravention of the *Customs Act* as well as the conveyance used in the contravention.

9. Section 159 - Stipulates that it is an offence to smuggle or attempt to smuggle any goods subject to duties, or any imported goods that are prohibited, controlled, or regulated by or pursuant to this or any other Act of Parliament.
10. Section 160 - Stipulates that a person who contravenes certain sections of the *Customs Act*, for example jewellery smuggling, is guilty of an indictable offence or an offence punishable by summary conviction, and is liable to a fine and/or imprisonment.

Customs Tariff

11. Chapter 71 of section XIV of the *Customs Tariff* gives the harmonized code for natural or cultured pearls; precious or semi-precious stones; precious metals; metals clad with precious metal, and articles thereof; imitation jewellery and coin.
<http://www.cbsa.gc.ca/general/publications/tariff2005/ch71ne.pdf>
12. Chapter 91 of Section XVIII of the *Customs Tariff* gives the harmonized code for clocks and watches, musical instruments, parts and accessories thereof.
<http://www.cbsa.gc.ca/general/publications/tariff2005/ch91ne.pdf>

Excise Tax Act

13. On May 2, 2006, the Minister of Finance tabled a Ways and Means Motion to eliminate tax on goods outlined in sections 5, 5.1 and 5.2 of Schedule 1 to the *Excise Tax Act*. These goods are:
 - a) clocks with a duty paid value or sale price of \$50 or more;
 - b) articles made in whole or in part of natural shells or semi-precious stones;
 - c) jewellery, including diamonds and other precious or semi-precious stones, for personal use or adornment of the person; and
 - d) goldsmiths' and silversmiths' products

Note: The excise tax on these products is eliminated, effective May 2, 2006. The excise tax on watches was eliminated earlier.

14. For more information on the elimination of the Excise Tax on Jewellery products please consult:
<http://www.cra-arc.gc.ca/E/pub/et/etsl60/etsl60-e.html>

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Jewellery and Watches

PURPOSE AND SCOPE

15. The purpose of this policy is to provide the appropriate methods of determining the value for duty of goods imported or exported in contravention of the *Customs Act*.
16. This policy applies to all employees of the CBSA and relates to jewellery imported to, or exported, from Canada through any means (e.g. postal, marine, travellers).

POLICY GUIDELINES

17. It is the CBSA policy to issue a seizure and offer terms of release when a traveller has contravened the *Customs Act* by not declaring, misdescribing or undervaluing jewellery to evade duties and taxes.
18. It is CBSA policy to issue a Notice of Penalty Assessment (NPA) for commercial contraventions.
19. Jewellery can be seized as evidence pursuant to section 110(3) of the *Customs Act*. In such instances the jewellery will likely be returned to the importer once all of the legal proceedings are complete and the duties and taxes are paid. When a CBSA officer is considering seizing the jewellery as evidence, the Investigation Division must be consulted.

Appraisal

20. The value of the jewellery must be determined to issue an enforcement action, such as a seizure or an Administrative Monetary Penalty (AMP).
21. The primary basis for determining the value for duty is the transaction value method under section 48 of the *Customs Act*. Under this method, the value for duty is based on the receipt or invoice price paid (or payable) for goods, when sold for export to Canada, to a purchaser residing in Canada. Where there is no sale or price paid or payable, section 48 does not apply.
22. In the case of seized jewellery where the transaction value (section 48) cannot be ascertained or the sale was not for export to Canada, a CBSA officer may utilize section 49 to 53 to determine a value for the purposes of establishing the terms of release.

23. In these circumstances, the value for duty will most often be determined under the provisions of section 53 of the *Customs Act*, the residual method. Section 53 allows CBSA officers to arrive at a value for duty, which is consistent with the intent of the valuation legislation. The intent is to ensure that the value determined is fair, neutral, objective and reflects commercial reality.
24. Arriving at a value under section 53 will usually involve obtaining a fair, equitable and commercially realistic appraisal from a Canadian gemologist. The gemologist report may be required as evidence to support a criminal charge by investigators and the gemologist may be required to testify.
25. When a CBSA officer requests an appraisal, the requesting office is responsible for payment. When the RCMP requests an appraisal as a result of a CBSA seizure made by them, they may send the appraisal invoice to the Regional Compliance Verification Unit.
26. CBSA officers must reduce the gemologist's appraised value to reflect various charges included in the value, such as freight and insurance to, and in, Canada; duties and taxes; as well as an amount for profit, costs and general expenses usually associated with the sale of identical or similar goods in Canada (78 percent of the appraised value when imported for resale or 56 percent of the appraised value when imported for personal use). The adjusted consumer price may then be considered the value for duty pursuant to section 53 of the *Customs Act*.
27. For the purpose of making adjustments to a gemologist's appraisal to obtain a value for duty, watches are not included in the definition of jewellery.
28. If the jewellery was not acquired on the current voyage, but perhaps has been in the traveller's family possession abroad for a number of years, old receipts may be used in determining the value for duty.
29. The CBSA recommends that settlers and travellers have an appraisal from a gemologist when importing or travelling with jewellery. Jewellery cannot be listed on a form Y38 Identification of Articles for Temporary Exportation (see the Travellers Processing Manual, Part 6 Chapter 2). Jewellery requires an appraisal report with a signed and dated photograph. Watches with serial numbers may be listed on a Y38.

EN Part 2 Chapter 5

Jewellery and Watches

General

30. Engagement rings and wedding rings may be imported into Canada on a temporary basis without payment of duties when the recipient will subsequently take up permanent residence outside of Canada (see Customs Memorandum D2-1-3).
31. The CBSA assists National Resources Canada (NRCan) in administering certain provisions of the *Export and Import of Rough Diamonds Act*. This act requires that a Kimberley Process Certificate accompany all imports and exports of rough diamonds. Additional information regarding this program is contained in Memorandum D19-6-4, Kimberley Process - Export and Import of Rough Diamonds.
32. Precious and semi-precious gemstones that have been set or mounted are included in group one for the purpose of arriving at a penalty factor for seizure action (see Part 5 Chapter 2 Traveller Seizures and Ascertained Forfeitures).
33. The proper date to use for calculating exchange rates is the one in effect on the date of direct shipment to Canada, and not the date of purchase.
34. Officers should contact the Investigations Division if the value of the jewellery exceeds the prosecution threshold as per Part 9 Chapter 1.
35. For extensive details on determining value, refer to D13 - Valuation of the Customs D-Memoranda (<http://www.cbsa-asfc.gc.ca/menu/D13-e.html>).

ROLES & RESPONSIBILITIES

CBSA Officers

36. CBSA officers are responsible for:
 - a) conducting compliance verification of both travellers and commercial shipments;
 - b) determining the proper enforcement action; and
 - c) determining the value for duty in cases of enforcement actions.

- d) In cases where the prosecution thresholds are met, the Investigation Division or the Regional Intelligence Officer (RIO) should be contacted before the goods or the person(s) are released, to determine if a criminal prosecution, further investigation or further intelligence gathering, is warranted.

Investigators

- 37. Investigators are responsible for reviewing referrals resulting from jewellery seizures to determine whether or not a criminal prosecution should be considered, or whether further investigation is warranted.

Regional Intelligence Officers (RIO)

- 38. Regional Intelligence Officers are responsible for facilitating the exchange of timely information or intelligence concerning individuals and organizations suspected of involvement in the smuggling of jewellery activities.

Investigation Division

- 39. The Investigation Division is responsible for prosecuting all offences under the *Customs Act* and should be contacted immediately whenever there is reason to believe that a seizure may lead to criminal charges based on CBSA prosecution policies.

Intelligence Directorate

- 40. The Intelligence Directorate is responsible for:
 - a) maintaining up-to-date enforcement data; and
 - b) providing operational support and guidance.

PROCEDURES

- 41. When an invoice is presented for the goods (transaction value), the officer should accept the value and should not request an appraisal. If the officer believes the value is low, the details of the import may be referred to Investigations.
- 42. When an officer finds undeclared jewellery or evidence of undervaluation (e.g. second invoice), the officer may take the appropriate enforcement action. In the absence of commercial invoices regarding the goods, the officer must obtain a determination of the value for duty.

EN Part 2 Chapter 5

Jewellery and Watches

Note: For information on appropriate enforcement action please see Part 5, Chapter 1, Commercial Seizures, Ascertained Forfeitures and AMPS as well as Part 5, Chapter 2, Travellers Seizure and Ascertained Forfeiture.

43. If necessary, officers will request an appraisal from a gemologist. In cases involving watches, a recognized jeweller should confirm the authenticity of the watch.
44. Watches are considered a group one item for the purposes of the calculation of terms of release. However watches are not considered jewellery for the purposes of reducing an appraisal value.
45. An officer will reduce the gemologist's appraised value of jewellery (not including watches) by the following amounts:
 - a) when imported for resale, 78 percent of the appraised value; or
 - b) when imported for personal use, 56 per cent of the appraised value.
46. If the gemologist appraises gold and silver items by weight rather than the cost of a similar item in Canada, do not reduce the value.
47. For detailed information on the storage, control and disposal of goods, please refer to the Comptrollership Manual, Material Management Volume:

Control of Seized, Detained, Abandoned and Forfeited Goods:
[Policy](#) [Guidelines](#)

Disposal of Seized, Detained, Abandoned and Forfeited Goods:
[Policy](#) [Guidelines](#)

LEGISLATIVE AND POLICY REFERENCES

48. *Customs Act*
Customs Tariff
Excise Tax Act.
D-Memoranda
Travellers Processing Manual

ENFORCEMENT MANUAL

Part 2

ENFORCEMENT PRIORITIES

Chapter 6

DRUG AND PRECURSOR CHEMICAL POLICY AND PROCEDURES

17/10/18

EN Part 2 Chapter 6

Drugs and Precursor Chemicals

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Drugs and Precursor Chemicals

APPENDIX C: Procedures for cannabis1

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to interdict substances controlled by Health Canada legislation and regulations.

DEFINITIONS

2. Refer to Part 11 - Glossary.

AUTHORITIES

Customs Act

3. Section 11 requires every person arriving in Canada to report to a CBSA officer and to answer truthfully any questions asked by an officer in the performance of his or her duties under this *Act* or any other Act of Parliament.
4. Section 12 requires that all goods that are imported be reported to the CBSA.
5. Section 13 requires every person reporting goods under section 12, to present goods to the officer and answer truthfully any question asked by the officer with respect to the goods.
6. Section 98 provides that an officer may search any person who the officer suspects on reasonable grounds has goods concealed on or about their person that may contravene the *Act*, could be evidence of a contravention of the *Act*, or the importation or exportation of which is prohibited, controlled or regulated by this or any other act of Parliament.
7. Subsection 99(1) authorizes the examination of any goods and conveyances that a CBSA officer suspects on reasonable grounds contains goods that are in contravention of the *Act*.
8. Section 101 authorizes the detention of controlled goods that have been imported or are about to be exported. The officer will release the goods once he or she is satisfied that the goods have been dealt with in accordance with this *Act*, and any other *Act* of Parliament that prohibits, controls or regulates the importation or exportation of goods.
9. Section 107 authorizes the disclosure of customs information to certain persons.

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Drugs and Precursor Chemicals

10. Section 110 stipulates that an officer may, with reasonable grounds, seize goods involved in a contravention of the *Customs Act* as well as the conveyance used in the contravention.
11. Section 159 stipulates that it is an offence to smuggle or attempt to smuggle any goods subject to duties, or any goods the importation of which is prohibited, controlled, or regulated by or pursuant to this or any other Act of Parliament.
12. Section 160 stipulates that a person who contravenes certain sections of the *Customs Act*, for example drug smuggling, is guilty of an indictable offence or an offence punishable by summary conviction and is liable to a fine and/or imprisonment.

Cannabis Act

13. Section 8 stipulates that, except as authorized, it is prohibited for an individual to possess cannabis.
14. Section 9 stipulates that, except as authorized, it is prohibited for an individual to distribute cannabis, or to possess cannabis for the purpose of distribution.
15. Section 10 stipulates that, except as authorized, it is prohibited for an individual to sell cannabis, or to possess cannabis for the purpose of selling it.
16. Section 11 stipulates that the importation or exportation of cannabis is prohibited unless authorized under the *Cannabis Act*.
17. Section 12 stipulates that the production of cannabis is prohibited unless authorized under the *Cannabis Act*.
18. Section 13 stipulates that the possession, production, sale, distribution, and importation of illicit cannabis, or the possession, production, sale, distribution, and importation of anything to be used to produce, sell or distribute illicit cannabis is prohibited.
19. Section 14 prohibits the use of a young person in the commission of any offense under section 9 through 13 of the *Cannabis Act*.

Note: See Appendix C for procedures for cannabis.

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Drugs and Precursor Chemicals

Controlled Drugs and Substances Act (CDSA)

20. Subsection 4(1) stipulates that, except as authorized under the regulations, no person shall possess a substance included in Schedule I, II, or III of the CDSA.
21. Section 5 stipulates that no person shall traffic, or possess for the purpose of trafficking, a substance included in Schedule I, II, III or IV.
22. Section 6 stipulates that, except as authorized under the regulations, it is an offence to import into Canada or export from Canada a substance included in Schedules I, II, III, IV, V or VI of the CDSA.
23. Section 7 stipulates that, except as authorized under regulations, no person shall produce a substance included in Schedules I, II, III or IV.
24. Schedule I includes dangerous drugs and narcotics, such as phencyclidine, heroin and cocaine. Schedule II lists some forms of synthetic cannabinoids. Schedule III includes drugs such as amphetamines and lysergic acid diethylamide (LSD). Schedule IV includes drugs such as barbiturates, which while dangerous, have therapeutic uses. Schedule VI lists precursor chemicals, which can be employed in the manufacture of substances listed in schedules I to IV.
25. The *Benzodiazepines and Other Targeted Substances Regulations* authorize Health Canada to issue import and export permits for targeted substances and allows for a traveller to import personal use quantities with a labelled prescription. Targeted substances are listed in Schedule I of the regulations.
26. *Precursor Control Regulations* are designed to control chemicals that can be used in the production of illicit drugs.

Criminal Code

27. Subsection 495(1) authorizes officers to arrest persons found committing or known to have committed a criminal offence (e.g. smuggling narcotics).

Food and Drug Act and Food and Drug Regulations

28. These regulations restrict the import of drugs listed in Schedule F. Drugs covered by an import permit and prescribed drugs for personal use may be imported.

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Drugs and Precursor Chemicals

Charter of Rights and Freedom

29. Section 8 states everyone has the right to be secure against unreasonable search or seizure.
30. Section 9 states everyone has the right not to be arbitrarily detained or imprisoned.
31. Section 10 states everyone has the right on arrest or detention:
 - a) to be informed promptly of the reasons for arrest or detention;
 - b) to retain and instruct counsel without delay and to be informed of that right; and
 - c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.
32. Subsection 24(1) states that anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy, as the court considers appropriate and just in the circumstances.

PURPOSE AND SCOPE

33. The purpose of this policy is to guide CBSA officers in the interdiction of controlled or regulated drugs and inform them of the appropriate enforcement action under the *Customs Act* and other Acts of Parliament.
34. This policy applies to all CBSA officers in all modes of transportation.

BACKGROUND

35. Drugs are a high-risk commodity and the interdiction of illegal drugs is therefore a CBSA enforcement priority.
36. Canadian law enforcement is committed to working with their U.S. counterparts to combat drug trafficking. Joint threat assessments and operations have expanded intelligence sharing, investigative cooperation and training opportunities.
37. The Trans-national Intelligence Section of the Strategic Intelligence Analysis Division publish a monthly drug report of significant drug seizures, which is available on a PROTECTED basis.

38. CBSA selection techniques and search procedures have withstood close examination in recent drug-related court cases.
39. However, the CBSA lost a court case that involved smuggling of a prohibited good because no false statements were made.

A false statement, non-report or some indication that there was intent to smuggle must also be present. Superintendents are responsible for determining if it is necessary to contact Regional Intelligence Officers, who will then liaise with the appropriate Partner agency for potential criminal charges under the *Customs Act* or another Act of Parliament.

40. CBSA officers have the authority to seize drugs, under the *Criminal Code*, in rare circumstances when no contravention of the *Customs Act* has occurred.

POLICY GUIDELINES

Types of Enforcement Actions

41. CBSA officers have many tools at their disposal to control the import and export of inadmissible drugs and must choose the appropriate action depending on the circumstance. They may:

- a) arrest a person for smuggling (section 159 of the *Customs Act*).

Note: In rare circumstances, when smuggling did not occur, a designated officer may arrest for illegal possession or importation/exportation of certain drugs (as per sections 4 or 6 of the CDSA, and/or section 11 of the *Cannabis Act*).

- b) seize any substance under subsection 110(1) of the *Customs Act* if it is not properly declared as per sections 7.1 and 12 of the *Customs Act*;
- c) seize a substance as evidence of an offence (as per section 110(3) of the *Customs Act* or as per section 489(2) of the *Criminal Code*);
- d) seize a conveyance used to commit an offence (as per subsection 110(2) of the *Customs Act*)

- e) issue an administrative monetary penalty to a non-compliant person with a commercial shipment (section 109.1 of the *Customs Act*);
- f) when seizure action is not warranted, detain any substance under section 101 of the *Customs Act*; until it can be properly disposed of or released; or
- g) when seizure action is not warranted, allow a person to abandon as forfeit a substance that is inadmissible.

Note: See Appendix C for additional guidance relating to cannabis interdictions only.

- 42. When the CDSA or *Cannabis Act* is contravened, it is the responsibility of the police to decide whether to lay charges.

Types of inadmissible drugs

- 43. Drugs that are illegal to possess, import or export are listed in Schedules I, II and III of the CDSA (e.g. cocaine), and Schedule I of the *Cannabis Act*.
- 44. Drugs that are illegal to import or export are listed in Schedules IV of the CDSA (e.g. anabolic steroids).

However, some of the drugs listed in Schedule IV are admissible if imported by a pharmacist or practitioner with a permit or by a traveller with labelled prescription packaging. These targeted drugs (e.g. Lorazepam) are listed in Schedule I of the *Benzodiazepines and Other Targeted Substances Regulations*.

- 45. Precursor chemicals are illegal to import or export and are listed in Schedule VI of the CDSA.

For a list of exceptions to this rule see the [Precursor Control Regulations](#)

46. The [Food and Drugs Act](#) and the [Food and Drug Regulations](#) restrict some food, drugs, vitamins and cosmetics. See Schedule F for a list of drugs that are restricted to import permit holders or personal use imports.

See also [Import and Export Policy for Health Products under the Food and Drugs Act and its Regulations \(POL-0060\)](#) and [Guidance Document on the Import Requirements for Health Products under the Food and Drugs Act and its Regulations \(GUI-0084\)](#) for Health Canada's policy on imports.

47. It is the responsibility of Health Canada to determine if a product is admissible.

Sources for determining the status of a substance

48. CBSA officers may e-mail Status@hc-sc.gc.ca to obtain information about whether a substance is a controlled drug.
49. Officers may also contact the regional Health Products and Food Branch inspectors.

Forfeiting inadmissible drugs

50. Individuals attempting to import controlled substances (e.g. nutritional supplements, diet pills) are often unaware of their prohibition. Such goods are often legally purchased and reported.
51. A CBSA officer may elect to defer enforcement actions such as seizures, which subsequently may cause the person to be unnecessarily referred for a secondary examination every time they seek entry into Canada.
52. If this is the case, the CBSA officer will select the Integrated Customs Enforcement System (ICES) allegation "Forfeited – Narcotics, Controlled drugs, Restricted drugs, Chemicals". By recording the substances as "forfeited", the HC/SC3515 *Drug Offence and Disposition Report* will be generated. This is not a seizure and no K19S seizure receipt is produced. However, a BSF241 form will be auto-generated to serve as a written receipt for the traveller. The BSF241 is not to be used to replace the existing procedures for transfer to and disposal by the RCMP.
53. As with all other commodities (e.g. weapons), it is up to the officer to determine if a seizure, abandonment, or detention (forfeiture) is warranted. Not all contraventions of the *Customs Act* are intentional on the part of the person who contravenes them. Negligence, carelessness and lack of

knowledge on the part of the importer are factors worthy of consideration when deciding whether to proceed with an enforcement action.

General

54. The provisions of the Written Collaborative Arrangement between CBSA and the RCMP (Annexes 7 and 12) must be followed in all instances where the CBSA interacts with the RCMP on drug related matters.

55. Officers will use contraband detection equipment, tools, and detector dog teams to assist them in examinations for controlled, regulated or prohibited drugs, whenever possible and when deemed appropriate.

Note: Refer to Part 4, Chapter 1, Contraband Detection Equipment Policy and Procedures.

56. Officers will familiarize themselves with indicators, concealment methods, trends, and other related information by reading intelligence bulletins, alerts, and other relevant publications available at the CBSA office.

57. When speaking to arrested persons, their legal representative, or other persons, officers will refer to the substances as “suspected” in any conversations or reports (for example, suspected cannabis, or suspected cocaine). Identification of the type of drug will only be determined through laboratory analysis.

58. Every individual has a right under authority of section 129 of the *Customs Act* to appeal an enforcement action. The *K19S Seizure Receipt* serves as an individual’s notice of their appeal rights.

Importation of Drugs by the Police or Agents Working Under Police Control

Street drugs

59. This section covers the importation of drugs by a peace officer for enforcement purposes,

The drugs are referred to as street drugs.

60. Officers will only allow police (or agents working under police control) to enter Canada with scheduled drugs if they have been named on a certificate stating they are immune from prosecution for contravention of provisions of the CDSA (e.g. possession, trafficking and import/export).

61. The Assistant Commissioner of the RCMP (Federal Sections) issues certificates of immunity to the police/agents.

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62. A police officer's certificate of immunity covers a time period and is valid for multiple importations.
63. CBSA Officers will create an HC/SC 3515 in ICES (or manual) to create a seizure number and enter the drug data.
64. The local Intelligence and Contraband officer will notify the appropriate port of entry when police/agents are expected to bring drugs into Canada and have a certificate of immunity from CDSA offences.
65. CBSA officers must also complete a K129 Exhibit Control form to transfer the drugs to the police officer.

State drugs

66. This section covers the importation of drugs that have been provided by a foreign government for use as evidence in court proceedings or for testing. The drugs are referred to as state drugs.
67. The peace officer in possession of the drugs must have a Health Canada-issued import permit describing the drugs.
68. CBSA officers must complete a Drug Offense and Disposition report, HC/SC 3515, without processing a seizure in ICES (i.e. complete hard copies only, leaving defendant information blank). The Health Canada import permit number will be shown as the Customs file reference number on the HC/SC 3515.
69. CBSA officers must also complete a K129 Exhibit Control form to transfer the drugs to the police officer.

Drug Couriers

70.

Handling of Drugs and Drug Paraphernalia - Health and Safety

- 71. Officers will use caution when examining for drugs to avoid harmful traps that drug smugglers may set.
- 72. Officers will not freely run their hands into pocket compartments, void areas, etc. of conveyances without a visual examination or, if necessary, the use of inspection mirrors and flashlights, fibrescopes, probes, or X-ray equipment first.
- 73. Officers will wear latex gloves when handling suspected drugs to protect themselves from contamination and to ensure fingerprint evidence is preserved.
- 74. If drugs in powdered form are discovered, officers must wear protective breathing masks.
- 75. Officers will use extreme caution when handling drug paraphernalia, such as hypodermic needles. If accidentally pricked, cut, etc., immediate medical attention will be sought and an accident report filed.
- 76. Officers may use Narcotic Identification Kits (NIK) to identify suspected drugs.
- 77. Officers will not, under any circumstances, attempt to identify a drug by taste or smell.

Drug Paraphernalia

- 78. Although it is no longer an offence under the *Criminal Code* to import or export drug paraphernalia,
- 79. It is CBSA policy, however, to notify the RCMP/police when the officer believes the paraphernalia would be of interest to law enforcement.
- 80. When seizure is warranted, if there is both a contravention of the *Customs Act* and a contravention of the *Criminal Code*, officers will seize under the *Customs Act* before notifying police.

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81. If the police choose not to seize the shipment, officers will treat the drug paraphernalia like any other product. Once all customs processing is complete (and this may include payment of terms of release), the goods may be released.
82. The fact that the paraphernalia may have been used does not make it automatically subject to seizure.
83. Officers encountering drug paraphernalia contaminated with a measurable quantity of drug will follow procedures for drug interdiction.

Precursor Chemicals

84. The Precursor Control Regulations provide controls on the import, export and distribution of these chemicals and are designed to control chemicals that can be used in the production of illicit drugs:
85. There are currently 29 precursor chemicals that are recognized and listed within the *Controlled Drug and Substances Act*. These are found in Schedule VI of the *Act* and are the following:

SCHEDULE VI

PART I

CLASS A PRECURSORS¹

1. Acetic anhydride
2. N-Acetylanthranilic acid (2-acetamidobenzoic acid) and its salts
3. Anthranilic acid (2-aminobenzoic acid) and its salts
4. Ephedrine (erythro-2-(methylamino)-1-phenylpropan-1-ol), its salts and any plant containing ephedrine or any of its salts
5. Ergometrine
(9,10-didehydro-N-(2-hydroxy-1-methylethyl)-6-methylethyl-8-carboxamide) and its salts
6. Ergotamine (12'-hydroxy-2'-methyl-5'-(phenylmethyl)ergotaman-3',6',18-trione) and its salts
7. Isosafrole (5-(1-propenyl)-1,3-benzodioxole)
8. Lysergic acid (9,10-didehydro-6-methylethyl-8-carboxylic acid) and its salts
9. 3,4-Methylenedioxyphenyl-2-propanone (1-(1,3-benzodioxole)-2-propanone)
10. Norephedrine (Phenylpropanolamine) and its salts
11. 1-Phenyl-2-propanone
12. Phenylacetic acid and its salts
13. Piperidine and its salts
14. Piperonal (1,3-benzodioxole-5-carboxaldehyde)

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15. Potassium permanganate
16. Pseudoephedrine (threo-2-(methylamino)-1-phenylpropan-1-ol), its salts and any plant containing pseudoephedrine or any of its salts
17. Safrole (5-(2-propenyl)-1,3-benzodioxole) and any essential oil containing more than 4% safrole
18. Gamma-butyrolactone (dihydro-2(3H)-furanone
19. 1,4-butanediol
20. Red Phosphorus
21. White Phosphorus
22. Hypophosphorous acid, its salts and derivatives
23. Hydriodic acid

¹ Each Class A precursor includes synthetic and natural forms.

PART 2 CLASS B PRECURSORS¹

1. Acetone
2. Ethyl ether
3. Hydrochloric acid
4. Methyl ethyl ketone
5. Sulphuric acid
6. Toluene

¹ Each Class B precursor includes synthetic forms.

86. Class A precursors require licences and permits for import and export as well as for production and distribution. No person other than a licensed dealer may produce, package, sell or provide a class A precursor.
87. Class B precursors require registration for import, export and production for sale and permits for export to specific countries. Class B exports also require a Health Canada export permit when destined to certain designated countries.

NOTE: The Health Canada Precursor export permit may only be applied to a single complete shipment, although the permit may encompass more than one Class A precursor for the same shipment. Permits for multiple or partial shipments will not be authorized and all goods authorized by the permit must enter Canada at the same time.

88. A Health Canada permit is not required for individual importations under thresholds that are outlined in s.11 of the *Precursor Control Regulations* which states the following:

Individuals

- 1) An individual entering or returning to Canada and having in their possession a Class A precursor that is a preparation or mixture may import the preparation or mixture if
 - (a) the preparation or mixture is intended to treat a medical condition of the individual or an accompanying person for whom the individual is responsible;
 - (b) in the case of a preparation or mixture containing ephedra, ephedrine or pseudoephedrine, the preparation or mixture is packaged and labelled as a consumer product and the total quantity imported of the precursor contained in the preparation or mixture does not exceed
 - (i) in the case of ephedra, 20 g,
 - (ii) in the case of ephedrine, 0.4 g, and
 - (iii) in the case of pseudoephedrine, 3 g; and
 - (c) in the case of a preparation or mixture containing ergometrine or ergotamine, the preparation or mixture is packaged in a container with a label showing that it was dispensed under prescription in a pharmacy or hospital or by a physician and the total quantity imported of the precursor contained in the preparation or mixture does not exceed the lesser of
 - (i) a single prescribed course of treatment, and
 - (ii) a 90-day supply, based on the normal daily dose for the precursor.
 - 2) An individual leaving Canada and having in their possession a Class A precursor that is a preparation or mixture may export the preparation or mixture if the requirements of subsection (1) are met, with any modifications that the circumstances require.
89. When a precursor chemical shipment arrives at the border without a valid health permit, it will be detained until the importer or exporter complies with the regulations. Acceptable documentation for the import and export of precursor chemicals is an original, valid Health Canada permit.
90. When verifying the validity of a permit, ensure the permit contains the following information:

- a)
 - i) permit number;
 - ii) licenced dealer's name, address and business number;
 - iii) the name or description of the chemical composition of the precursor and the Harmonized System (HS) code;
 - iv) if it is a salt, the name of the salt;
 - v) if a preparation or mixture, its brand name and the names of all precursors that it contains;
 - vi) the quantity;
 - vii) name and address of exporter,
 - viii) means of transportation,
 - ix) name of any country of transit or transshipment;
 - x) name of the carrier
 - xi) port of entry
- b) Verify the permit is original (no duplicates, photocopies or fraudulent or tampered with permits will be accepted);
- c) Ensure the importer, quantity and description of the goods listed on the permit are the same as those listed in the customs documentation.

Note: discrepancies between the actual date of entry and proposed date of entry listed on the permit, or between the actual carrier and proposed carrier listed on the permit should not be grounds to detain the shipment.

- d) Verify the validity date of the permit.
- e) Ensure the goods contained in the shipment are the same as those described on the permit and customs documentation.
- f) Validate the permit with CBSA date stamp and initial if there are no discrepancies.

A discrepancy between the goods and the import documentation should give rise to further enquiry and the goods should be detained pending clarification. If there are reasonable grounds to suspect that an importer has misdescribed a chemical or if unidentified chemicals are found, the BSO will detain the shipment and immediately contact the Intelligence Officer.

Note: **At no time will a BSO, in the course of their examination, open any container holding precursor chemicals. If necessary, the Intelligence Officer will contact the CBSA Laboratory for assistance regarding examination of chemical precursor shipments.**

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91. If shipment is declared but a Health Canada permit is not presented, the CBSA officer will detain the shipment and query the importer and the company in available databases. If a national lookout or RCMP lookout is intercepted, contact the local regional Precursor Chemical Intelligence Officer and/or the RCMP.
92. High risk importers who are identified during an indices check should be subjected to a secondary examination.
93. If an importer makes untrue statements regarding, or fails to declare/report, a precursor chemical importation the allegations are Non-report of a prohibited, controlled or regulated narcotic (chemical); or Untrue Statement of a prohibited, controlled or regulated narcotic (chemical), the CBSA officer will determine if the contravention is personal or commercial.
94. If the goods are non-commercial:
 - a) Seize the goods with No Terms of Release in accordance with the seizure procedures outlined in Part 5 of this manual and apply the seizure process in ICES.
 - b) Contact the Regional Chemical Precursor Diversion Intelligence Officer. If unidentified chemicals are found, inform the Intelligence Officer who will contact the CBSA laboratory and who will also contact the RCMP to determine if charges will be laid under the *Controlled Drugs and Substances Act*.
 - c) Copy all commercial documents, records and personal identification and seizure documents (including the HC/SC-3515) and submit with the seizure documents to the Intelligence Officer.
95. If the goods are commercial:
 - a) Seize the goods with no Terms of Release in ICES. In addition to seizure of goods, apply the relevant AMPS penalty using ICS-Enforcement. Precursor chemicals are defined as “specified goods” in the AMPS system and for commercial shipments the penalty will be based on the AMPS system.
Note: Warning Letters should not be issued in cases where there is a failure to declare exports of controlled, regulated or prohibited goods.
 - b) Contact the Regional Chemical Precursor Diversion Intelligence Officer. Under no circumstances shall a BSO open any container that is said to hold hazardous precursor chemicals; if unidentified chemicals are found, inform the Intelligence Officer who will contact the CBSA Laboratory for assistance. The Intelligence Officer will also contact the RCMP

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regarding any possible charges under the *Controlled Drugs and Substances Act*.

- c) Copy all commercial documents, records, and personal identification and submit it with the seizure documents to the Intelligence Officer. The Intelligence Officer will contact the CBSA Laboratory in order to determine the procedure for transport and testing of seized precursor chemicals;
- d) All export documents; records and personal identification will be recorded and forwarded along with the enforcement records to the Intelligence Officer.
- e) Until further notice from Health Canada or the Intelligence Officer, the seized precursor chemical shipment will be held under CBSA control. The Intelligence Officer will contact the CBSA Laboratory in order to determine the procedure for disposal/transport/testing of seized precursor chemicals.

Exhibit Control

- 96. Seizing officers will maintain constant control over all exhibits and ensure the chain of custody is not broken until the exhibits are turned over to the appropriate police agency. This protects the integrity and admissibility of evidence in potential court proceedings.
- 97. In order to ensure the chain of custody remains unbroken, all transfers to other agencies or persons must be signed off and accounted for. Until the suspected drugs are given to the police, the sealed exhibit must be locked in a secure location, such as a safe.

Note: Refer to Part 9, Chapter 3, Statements and Evidence.

ROLES AND RESPONSIBILITIES

CBSA Officers

- 98. CBSA officers are responsible for:
 - a) complying with this policy and these procedures;
 - b) interdicting suspected drugs and, in some instances, drug paraphernalia;
 - c) liaising with the Superintendent and/or Intelligence Officer;

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- d) arresting persons attempting to smuggle drugs into or out of Canada, under authority of section 495(1) of the *Criminal Code* subject to the restrictions under section 495(2) of the *Criminal Code*;
- e) observing, targeting, selecting, and interviewing individuals to determine if they may be attempting to smuggle drugs when reporting to the CBSA;
- f) observing, targeting, selecting, and examining conveyances, baggage, goods, and commercial shipments for drugs when reported to the CBSA;
- g) being aware of current intelligence, trends, modus operandi, concealment methods, unusual routings, etc. as they pertain to drugs and source countries;
- h) awareness, recognition, collection and submission of information with intelligence value;
- i) thoroughly reviewing all lookouts, alerts, and targets;
- j) handling exhibits properly and ensuring the chain of custody is maintained;
- k) completing, as soon as practical, all necessary arrest and seizure documentation (including the K153 Significant Seizure Reports and IMS Occurrence reports when appropriate); and
- l) assisting the RCMP with drug-related matters when appropriate.

CBSA Superintendents

99. CBSA superintendents are responsible for:

- a) ensuring compliance with this policy and these procedures, including determining if an Intelligence referral is applicable;
- b) providing the necessary assistance and support to CBSA officers;
- c) ensuring completion and timely dissemination of reports concerning drugs and drug smugglers;
- d) ensuring the timely circulation of all intelligence reports, lookouts, alerts, and targets;
- e) sending locally collected drug intelligence to the Intelligence Officer; and

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- f) taking the necessary action when breaches of this policy and/or procedures occur.

Intelligence Officers

100. Intelligence Officers are responsible for:

- a) receiving, analyzing, and disseminating intelligence (exercising discretion) in a timely manner on suspected and known drug smugglers, concealment methods, source countries, etc.;
- b) collecting intelligence information and developing lookouts and alerts;
- c) issuing lookouts and alerts on suspect and known drug smuggling related persons, conveyances, shipments, etc.;
- d) providing expertise prior to RCMP involvement;
- e) participating on controlled deliveries, search warrants and surveillance related to imports and exports of narcotics;
- f) interviewing people suspected of smuggling narcotics; and
- g) maintaining open communication and sharing of information with the RCMP and other law enforcement agencies.

The Enforcement Branch

101. The Enforcement Branch is responsible for:

- a) developing, modifying, and approving policies in accordance with court jurisprudence, related to the administration of the *CDSA*, the *Cannabis Act* and the *Customs Act*;
- b) collecting information with which to develop intelligence;
- c) issuing lookouts and national alerts to CBSA officers on suspected and known drug smuggling related persons, conveyances, shipments, etc.;
- d) disseminating lookouts and alerts from other countries pertaining to suspected and known drug smuggling related persons, conveyances, shipments, etc.;
- e) sharing drug intelligence with partners;
- f) producing national drug intelligence products;

- g) foreign liaison concerning the international movement of drugs; and
- h) providing support to the field.

PROCEDURES

Refer to Part Six, Chapter Six, Personal Search Policy and Procedures, for guidelines pertaining to dealings with body packers and internal carriers.

Cannabis and CDSA-listed drugs

102. When drugs are not declared or inaccurately declared, there is a contravention of the *Customs Act* and normally these drugs are seized.

Note: In rare circumstances where the officer believes the importer did not intend to contravene the law (e.g. a traveller from South America has tea leaves with traces of cocaine), the officer may choose to detain the substance and document the drugs as forfeit rather than seized.

103. A seizing officer will:

- a) determine if there are sufficient indicators to support a belief that the substance is a drug (e.g. testing it with the narcotics identification kit);

Note: It is sometimes hard to determine if a commercially packaged product is admissible. To confirm the admissibility of suspicious products use one of the following methods:

- i. use product labels to identify the substance and the CDSA schedules to verify admissibility;
 - ii. use prior experience with similar products;
 - iii. if significant, call or e-mail the product details to Health Canada for a decision; or
 - iv. if significant, send a sample for analysis to the CBSA Laboratory & Scientific Services Directorate, for screening. Procedures for contacting the Lab may be found on their website.
- b) advise the shift superintendent who will determine if it is appropriate to contact Regional Intelligence;
- c) if the substance is believed to be a drug, it is advisable that the individual be arrested under authority of section 495(1) of the *Criminal Code* for having contravened section 159 of the *Customs Act* (smuggling);

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Note: Arrest is at the discretion of the officer but is generally advisable to ensure the person is detained until the officer has ascertained whether the person is of interest to the RCMP/police, and to ensure that anything said is admissible in court should additional drugs be found.

- d) make the following statements about the reasons for the arrest:
"I am arresting you for smuggling or attempting to smuggle into Canada goods, the importation of which is prohibited, controlled or regulated by or pursuant to the *Customs Act* or an Act of Parliament."

- e) seize the drugs as per section 110 of the *Customs Act* (usually the allegation is smuggling as per section 159 of the *Customs Act*);

Note: If the drugs are found in a commercial shipment or if the traveller has a commercial quantity of drugs, an officer may issue an AMP where it is practical to do so. It is not necessarily practical to issue an AMP to a courier with no known address who is about to be deported. The contravention is failure to report goods over \$1600.

- f) notify the RCMP (or local police depending on the local agreement) who will either arrive to take custody of the drugs and the person or will advise the CBSA officer to release the person;
- g) complete the form HC/SC 3515 Drug Offence and Disposition report and the K19S Seizure receipt in the Integrated Customs Enforcement System (ICES) as well as the Smuggling of Narcotics, Controlled, and Restricted Drugs Window;

Note: For non-automated ports, a Drug Offence and Disposition Report (HC/SC 3515) and K19S Customs Seizure receipt must be completed manually and sent to an automated port to be entered into ICES in recovery;

Note: For a product that contains a small percentage of drugs (eg. steroids in a body building food supplement), enter an estimated quantity of drug seized in the appropriate field. Otherwise, the statistics are misrepresented and the seizure and conveyance penalty amounts are excessive. Note the full description of the quantity and the product in the narrative.

- h) apply a conveyance penalty under section 110(2) as follows;
 - i) if conveyance was not modified for the purpose of smuggling and if no AMP was applied (i.e. non-commercial infraction), offer terms of release in accordance with the terms outlined in Appendix A (the terms of release cannot exceed the value of the conveyance);

- ii) if unmodified and the importer is subject to both seizure of the goods and an administrative monetary penalty (commercial goods), do not seize the conveyance; or
- iii) if the conveyance was modified for the purpose of, and used for smuggling drugs, do not offer terms of release.

Note: At times, it may also be appropriate to seize the conveyance as evidence related to a criminal offence.

Cannabis and CDSA-listed drugs not subject to seizure

104. Officers who encounter a traveller or parcel with drugs but no permit, will decide if there are sufficient indicators to support a belief that the importer intended to smuggle the drugs.

Note: Generally, the fact that the goods have arrived in Canada supports a belief of intention to smuggle, but there are occasions where an officer will decide that seizure is not warranted.

105. In the traveller stream, if the officer decides seizure is not warranted:

- a) advise the person that the arrest is no longer in force;
- b) advise the person that the drugs are inadmissible and must be forfeited (generally export is prohibited);
- c) complete a HC/SC 3515 Drug Offence and Disposition Report selecting the “forfeited” allegation. The RCMP collects and disposes of the drugs according to local arrangements and requires the report. ICES will generate a receipt for the traveller in the form of the BSF241 Non-Monetary General Receipt;

- d) at the conclusion of the examination and CBSA processing, allow the person to leave;

Note: Although an examination may be concluded for processes under the *Customs Act*, in some instances, a *Customs Act*, *CDSA* or *Cannabis Act* contravention may make a foreign national inadmissible under the IRPA 36(2)(d). Officers are encouraged to follow policy guidance relating to the application of this paragraph of the IRPA.

106. In the courier and postal streams if the officer decides not to seize the drugs and the RCMP/police do not wish to seize the drugs:

- a) advise the importer that the drugs are inadmissible and must be forfeited (generally export is prohibited); and
- b) complete a HC/SC 3515 Drug Offence and Disposition Report selecting the “forfeited” allegation. The RCMP collects and destroys the drugs according to local arrangements and requires the report. ICES will generate a receipt for the traveller in the form of the BSF241 Non-Monetary General Receipt.

Drugs regulated by the *Food and Drug Act*

107. Officers will not admit commodities with ingredients listed by Health Canada as unacceptable health risks (e.g. certain food supplements or health products).

108. Officers will detain, rather than seize, personal use prescription drugs in most cases. Seizure may be warranted if there are indicators of intent to smuggle and knowledge that the goods are restricted (e.g. the traveller has had the product detained before).

109. If an officer is unsure if a product meets the *Food and Drug Act* regulations for import, the officer should contact Health Canada for advice.

110. If the product is inadmissible but seizure is unwarranted:

- a) Postal: insert a form letter to advise the exporter that the drugs are inadmissible and return to Canada Post;
- b) Courier: advise the courier that the goods are inadmissible by means of a BSF241 Non-Monetary General Receipt, hold the package until sure that the importer has not arranged export or is not contesting the Health Canada determination (no more than 60 days) and then complete an HC/SC 3515 in ICES with an allegation of forfeited;
- c) Traveller: advise the traveller that the goods are inadmissible and, unless the traveller exits Canada with the goods, complete an HC/SC 3515 in ICES with an allegation of forfeited and give the traveller a copy of the BSF241);

Note: Detain the goods for 60 days if the person intends to request a permit or an admissibility ruling from Health Canada.

- d) Hold the goods that are not exported until the RCMP collects and destroys the drugs according to local arrangements.

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Note: See D19-9-1 Importation of Human Use Drugs for information on what quantities constitute personal use.

General

111. When an officer identifies a traveller as a courier, alert all other officers and the Intelligence Officer

112. Photograph any novel or unique methods of concealment.

113. Forward copies of photographs and the negatives (where possible) with the seizure reports for subsequent transmittal to the Intelligence Officer who was previously contacted. The Intelligence Officer may send the photos to the Enforcement Branch for intelligence purposes.

114. Complete a K153 Significant Seizure Report if applicable.

115. For conveyance seizures;

- a) Complete the seizure receipt window in ICES for the conveyance used in importing the drugs.

Note: For non-automated ports, a Customs Seizure Receipt (K19S) must be manually completed.

Note: Refer to the ICES User Reference Manual for instructions on the completion of all seizure windows.

- b) Ensure that the following charge is included in the ICES seizure receipt window or on the K19S:

“The said conveyance was made use of in the importation of goods subject to forfeiture under the *Customs Act*.”

- c) At non-automated ports, ensure the HC/SC 3515 Drug Offence and Disposition Report is cross-referenced to the K19S.
- d) If an individual is also in possession of other goods subject to seizure, use the seizure receipt window in ICES for the seizure of these goods and the conveyance. Where the K19S is completed manually, be sure to calculate the total amount for release of the conveyance by adding the suggested amount from Appendix A and the amount appropriate for other non-reported goods. Enter the total amount on the receipt copy of the K19S.

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116. Do not seize conveyances solely because they have been modified presumably for smuggling, if the compartment does not contain any contraband. Do, however, advise the Intelligence Officer.
117. Ensure all exhibits turned over are marked or labelled showing the date, time, initials of the seizing officer, and seizure number.
118. Seal all seized drugs in exhibit envelopes (Customs Evidence Bags — R635 or R636) and ensure the seizing officer initials and records their badge number on the envelope as well as recording the date, time, place, suspect's name, and exhibit/seizure number.
119. Use exhibit numbers in series, such as 1, 2, 3, on each envelope and the seizure number as the prime reference.

Note: In the case of internal carriers, place the drugs from the first bowel movement in two separate evidence bags as follows:

- a) Place one single piece of evidence (pellet, condom, or balloon) in an evidence bag and mark it 1A;
- b) Place the remainder of the first bowel movement in a second evidence bag and mark it 1B;
- c) Place further bowel movements in separate bags and mark them sequentially, coinciding with each movement i.e., the second bowel movement will be placed in an evidence bag and marked 2, the third 3, and so on.

Note: Refer to Part Six, Chapter Six, Personal Search Policy and Procedures for detailed guidelines for dealing with body packers and internal carriers.

120. If materials are unavailable to permanently mark the exhibit envelope, staple an Evidence and Seizure Label (E360) to the envelope.
121. Lock the suspected drugs in a secure safe if the police are unable to attend immediately.
122. Note all details of the seizure and any arrests in your notebook including the date, times of specific procedures, suspects names, dates of birth, addresses, criminal records, appearance, any statements made by suspects, how the drugs were concealed, wrapped, discovered, and handled, etc.
123. Be prepared to give evidence for the prosecution during trial, if necessary.

Drug Paraphernalia

124. The decision to detain or release drug paraphernalia (after customs processing) rests with the local police agency of jurisdiction. If the police choose not to press charges, the goods are admissible.

125. If the paraphernalia is in commercial quantities or there are exceptional circumstances (e.g. a traveller who is a second-time offender or has paraphernalia with measurable quantities of residue) CBSA officers will contact the police for a decision regarding admissibility.

Note: For small quantities (e.g. a hash pipe whose residue is too small to measure), a traveller should be encouraged to abandon paraphernalia rather than wait while the officer calls police for a decision.

Deemed paraphernalia but no *Customs Act* Contravention

126. If the RCMP/police deem the goods to be paraphernalia and want it as evidence, but there is no *Customs Act* contravention:

- a) detain the goods under section 101 of the *Customs Act*;
- b) issue a form BSF241, Non-Monetary General Receipt;
- c) document the paraphernalia on a K129, Exhibit Control Form; and
- d) transfer the paraphernalia to the police as evidence of an offence under the *Criminal Code*.

Note: See Part 6, Chapter 7, *Criminal Code* Offences Policy and Procedures.

Deemed paraphernalia and a *Customs Act* Contravention

127. If the goods are deemed by the police to be paraphernalia and there is a contravention of the *Customs Act*:

- a) seize the personal goods under section 110 of the *Customs Act* offering no terms of release;
- b) apply an Administrative Monetary Penalty (AMP) to a maximum of \$25,000 if the goods are commercial quantities; and

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- c) transfer the paraphernalia to the police as evidence of an offence under the *Criminal Code*.

Customs Act Contravention but not inadmissible paraphernalia

128. If the goods are not inadmissible paraphernalia but there is a contravention of the *Customs Act*:

- a) apply an Administrative Monetary Penalty (AMP) to a maximum of \$25,000 (or seize with terms of release calculated in the same manner as the AMP if in excess of \$25,000), if the goods are commercial quantities; or
- b) seize with terms of release (but no conveyance penalty) if the goods are for personal use.

129. If the goods are not deemed by the police to be paraphernalia and there is no contravention of the *Customs Act*, the goods are admissible.

130. The discovery of paraphernalia provides reasonable grounds to suspect the presence of undeclared drugs and justifies further examination of goods, examination of a conveyance and, with other indicators, a personal search.

131. Seize drug paraphernalia as evidence of drug smuggling if there are measurable quantities of drug residue or the paraphernalia was discovered during a drug seizure.

Note: A measurable quantity is defined as a sufficient quantity to be tested with a NIK Test Kit to reveal solid results.

Disposal of Drugs

Cannabis and CDSA Drugs

132. CBSA officers are not authorized to destroy scheduled drugs.

133. Turn all drugs over to the RCMP with the applicable copies of the HC/SC 3515 Drug Offence and Disposition Report. The BSF241 is not to be used in lieu of the HC/SC 3515 Drug Offense and Disposition Report.

134. Store the drugs in a secure area until the police collect them. This may occur at the time of their discovery or later as per a local agreement for scheduled pick-ups.

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135. Where no secure storage exists (e.g. a small CBSA office) and pick-up by the police is not immediate, officers must deliver the drugs and HC/SC 3515 Drug Offence and Disposition Report forms to the district office. Create an audit trail with signature(s) obtained from the person(s) receiving the drugs.

Note: Transfers are to be made by using CBSA Mail Courier, CBSA officer hand-to-hand delivery, or a bonded courier service. If required, a Customs Notice – Unclaimed Goods (E 44) may be used to account for the transfer, however, the first and fifth copies of the E 44 should be destroyed.

136. The police are responsible for the destruction of the drugs.

Note: Normally, the RCMP is responsible for testing in order to substantiate prosecution; however, they will sometimes choose not to prosecute. In such cases, the CBSA will retain the seized drugs through the 90-day appeal period provided for under the Customs Act to ensure samples are available for testing if required. Should the person choose to appeal the seizure, CBSA will need proof that the substance was a drug.

Food and Drug Act Controlled Drugs

137. The Health Canada Inspectors are responsible for pick-up and destruction of FDA-controlled drugs.

Note: Under direction of Health Canada Inspectors, local arrangements may be made however, to ensure CBSA destruction, or to transfer of the FDA-controlled drugs to the RCMP if it is more practical for all agencies to dispose of the drugs in this manner.

138. If the Health Canada inspector collects the FDA-controlled drugs, the inspector completes HC/SC 0023 Health Canada Seizure form and the HC/SC 6010 Refusal form as appropriate. No HC3515 is completed.
139. All FDA-controlled drugs should be referred to Health Canada Inspectors at the following Health Products and Food Branch Inspectorate Operational Centres.

ATLANTIC OPERATIONAL CENTRE
Health Products and Food Branch Inspectorate
16th floor, suite 1625
1505 Barrington Street
Halifax, Nova Scotia
B3J 3Y6
Tel: (902) 426-2160
Fax: (902) 426-6676

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QUEBEC OPERATIONAL CENTRE
Health Products and Food Branch Inspectorate
1001 St-Laurent Street West
Longueuil, Québec
J4K 1C7
Tel: (450) 646-1353
Fax: (450) 928-4455

ONTARIO OPERATIONAL CENTRE
Health Products and Food Branch Inspectorate
2301 Midland Avenue
Scarborough, Ontario
M1P 4R7
Tel: (416) 973-1600
Fax: (416) 973-1954

MANITOBA AND SASKATCHEWAN OPERATIONAL CENTRE
Health Products and Food Branch Inspectorate
510 Lagimodière Blvd
Winnipeg, Manitoba
R2J 3Y1
Tel: (204) 984-1341
Fax: (204) 984-2155

WESTERN OPERATIONAL CENTRE
Health Products and Food Branch Inspectorate
4th Floor
4595 Canada Way
Burnaby, British-Colombia
V5G 1J9
Tel: (604) 666-3704
Fax: (604) 666-314

140. For detailed information on the storage, control and disposal of goods, please refer to the Comptrollership Manual, Material Management Volume:

Control of Seized, Detained, Abandoned and Forfeited Goods:
[Policy](#) [Guidelines](#)

Disposal of Seized, Detained, Abandoned and Forfeited Goods:
[Policy](#) [Guidelines](#)

Sending samples to CBSA or Health Canada Laboratories for analysis

141. If analysis is required, forward the required sample(s) to either the CBSA Laboratory in Ottawa or one of the Drug Analytical Services Laboratories, Health Canada, in Burnaby, Winnipeg, Toronto or Longueuil by registered mail or bonded courier.

Note: The CBSA Laboratory provides an enhanced screening service for unknown materials that Border Service Officers suspect as being CDSA violations or need to confirm the identity of for other reasons. Health Canada performs analysis of narcotics primarily for court purposes. Materials that are strongly suspected to be narcotics and likely to result in criminal charges are analyzed by Health Canada. CBSA performs analysis of *unknowns* for port of entry officers that may result eventually in the same charges.

Importation of Drugs by the Police or Agents Working Under Police Control

Street Drugs

142. Verify that the Intelligence Officer is aware of the transaction.

143. If the drugs are street drugs (to be used for enforcement purposes,

- a) allow only police or agents working under police control to enter Canada with scheduled drugs;
- b) ensure any such officer is named on a RCMP-issued Certificate of Immunity stating:
 - i) the number of the certificate;
 - ii) the certificate was issued by the Assistant Commissioner of the RCMP (Federal Sections);
 - iii) the name of the officer(s);
 - iv) the fact that the officers named have immunity from CDSA possession, trafficking and import/export offences; and
 - v) the period of time for which it is valid.

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- c) complete the HC/SC 3515 Drug Offence and Disposition Report in ICES, cross-referencing the police officer's Certificate of Immunity number. Only complete fields 2, 24, 25, 26, 28, 29, 34, 35, and 39 of the HC/SC 3515 Drug Offence and Disposition Report. To protect the security of the operation, input "anonymous" in the defendant name field and other personal information fields until the control delivery or investigation is complete and then update the record later through the correction process. Cross-reference the police officer's certificate of immunity number in the body of the document;
- d) ensure the police sign the HC/SC 3515 Drug Offence and Disposition Report before turning the drugs over to their custody for controlled delivery or whatever action has been approved through the proper channels; and
- e) immediately forward a copy of the HC/SC 3515 Drug Offence and Disposition Report and any accompanying narrative reports to the Intelligence Development and Field Liaison Section of the Enforcement Branch by fax at (613) 957-8555 so that they may maintain control of the file.

Note: Advance notice or, at a minimum, declaration for controlled delivery is required. Undeclared drugs must be seized under the *Customs Act* regardless of whether the police officer or agent has a Certificate of Immunity.

State drugs

144. If the goods are state drugs (provided by a foreign government for use as evidence in a court proceeding and covered by a permit):
- a) advise the Intelligence Officer, Intelligence and Contraband Division of the drug import and the circumstances surrounding it;
 - b) ensure the drugs are as described on the Health Canada-issued import permit;
 - c) complete a hard copy HC/SC 3515 (i.e. do not use the ICES system and do not give the form a seizure number);
 - d) complete a K129 Exhibit Control form, noting:

"The goods listed on this document have been reported as required under the *Customs Act* and are being imported as evidence for investigation and/or prosecution purposes."

- e) acquit the K129 by inputting the RCMP case number;
- f) ensure the police sign the HC/SC 3515 Drug Offence and Disposition Report and the K129 Exhibit Control form before turning the drugs over to their custody;
- g) document everything in the notebook;
- h) immediately forward a copy of the HC/SC 3515 Drug Offence and Disposition Report and any accompanying narrative reports to the Intelligence Development and Field Liaison Section of CCII by fax at (613) 957-8555 so that they may maintain control of the file.

Appeal Rights

- 145. CBSA officers are to provide all persons, from who suspected drugs are seized, a copy of the K19S Seizure Receipt, which serves as an individual's notice of their appeal rights. The Integrated Customs Enforcement System (ICES) produces a K19S Seizure *Receipt* for drug seizures as well as the HC3515 Drug Offence and Disposition Report.
- 146. In cases where the K19S Seizure receipt must be mailed (e.g. postal and courier modes), and the name or address is unknown, file the receipt with the office copy of the HC3515 Drug Offence and Disposition Report.
- 147. CBSA offices are to retain seized drugs during the 90-day appeal period or ensure that samples are taken. If a traveler appeals a seizure based on classification, the CBSA will be required to arrange for an analysis of the seized drugs. If a sample is not available for analysis, the seizure may not be upheld.

Note: The retention of seized drugs will not be applicable to situations involving prosecution, as the evidence will immediately be turned over to the RCMP. As the prosecuting agency is responsible for obtaining an analysis of the suspected drugs, the CBSA will not be required to hold the evidence.

For information on time limits for disposal of goods please refer to the Controllershship Manual- Material Management [Volume Chapter 5, Section 2 Guidelines](#).

Forms and Reports

148. Give as much detail in reports as possible. Specifically:

- a) record full names, addresses, and dates and places of birth of all persons involved or accompanying the offender. Show date of birth numerically as: year, month, and day;
- b) show last or surname in capital letters, e.g. SMITH;
- c) describe in detail where the drug was found, including a description of any wrapper or packaging;
- d) list indicators found that lead the officer to believe drugs were being carried/concealed and how the drugs were finally detected;
- e) indicate the suspected type of drug found e.g. suspected hashish, cannabis, heroin, opium, cocaine, LSD;
- f) enter the gross weight of packaging and product in the description portion of the exhibit entry and use expertise to enter the "best estimate" of the weight of the drugs for the ICES quantity.
- g) give a physical count and description of capsules, tablets, or pills, e.g. 5 yellow pills with a line on one side and the letter M in a circle on the other. Do not use terms such as "one bottle of pills" or "a small quantity."
- h) provide details of interviews/interrogations and cautions, rights, or advisements given and any responses received.
- i) record the street value of the drugs based upon values issued by the Enforcement Branch .
- j) indicate, where possible, the source of the drugs and their destination.

149. Use as much detail and emphasize accuracy as much as possible.

Note: ICES information, the BSF 241, or your HC/SC 3515 Drug Offence and Disposition Report may be used to develop an intelligence file.

150. See Appendix B for the distribution of forms.

REFERENCES

151. *Cannabis Act*
Customs Act
Criminal Code
Controlled Drugs and Substances Act
Canada Evidence Act
Food and Drugs Act
Food and Drugs Regulations
ICES User Reference Manual
Health Canada's Policy on Importations of Drugs For Human Use Including Natural Health Products Into Canada (POL-0019)
Controllershship Manual – Material Management Volume (Chapter 5, Section 2)

RESPONSIBLE OFFICE

Office of Primary Interest: Traveller Programs, Traveller Compliance Unit

Part Two

ENFORCEMENT PRIORITIES

Chapter Six

DRUG AND PRECURSOR CHEMICAL POLICY AND PROCEDURES

Appendix A

**SPECIAL TERMS OF
RELEASE FOR CONVEYANCES
USED IN DRUG SMUGGLING**

EN Part 2 Chapter 6

Drugs and Precursor Chemicals

APPENDIX A

APPENDIX A: SPECIAL TERMS OF RELEASE FOR CONVEYANCES USED
IN SMUGGLING PERSONAL USE QUANTITIES OF DRUGS

Amount	Cannabis	Hash- ish	Hashish Oil	Controlled Drugs	Hallucinogens	Cocaine/ Opiates
*\$220	over 8 grams but not over 15 grams	over 2 grams but not over 4 grams	1 gram or less	over 10 pills but not over 20 pills	over 1 dosage but not over 4 dosages	1 gram or less \$400
\$440	over 15 grams but not over 30 grams	over 4 grams but not over 8 grams	over 1 gram but not over 2 grams	over 20 pills but not over 40 pills	over 4 dosages but not over 8 dosages	
\$550	over 30 grams but not over 60 grams	over 8 grams but not over 16 grams	over 2 grams but not over 4 grams	over 40 pills but not over 60 pills	over 8 dosages but not over 12 dosages	
\$660	over 60 grams but not over 100 grams	over 16 grams but not over 24 grams	over 4 grams but not over 6 grams	over 60 pills but not over 80 pills	over 12 dosages but not over 16 dosages	
\$770	over 100 grams but not over 150 grams	over 24 grams but not over 32 grams	over 6 grams but not over 8 grams	over 80 pills but not over 110 pills	over 16 dosages but not over 20 dosages	
\$880	over 150 grams but not over 200 grams	over 32 grams but not over 40 grams	over 8 grams but not over 10 grams	over 110 pills but not over 140 pills	over 20 dosages but not over 24 dosages	
\$990	over 200 grams but not over 250 grams	over 40 grams but not over 46 grams	over 10 grams but not over 12 grams	over 140 pills but not over 160 pills	over 24 dosages but not over 28 dosages	
\$1100	over 250 grams but not over 300 grams	over 46 grams but not over 56 grams	over 12 grams but not over 14 grams	over 160 pills but not over 180 pills	over 28 dosages but not over 32 dosages	

EN Part 2 Chapter 6

Drugs and Precursor Chemicals

APPENDIX A

For amounts in excess of the above stated sums:

over 300 grams: \$4 for each additional gram	over 56 grams: \$20 for each additional gram	over 14 grams: \$70 for each additional gram	over 180 pills: \$8 for each additional pill	over 32 dosages: \$40 for each additional dosage	over 1 gram: \$400 for each gram
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***Note:** This amount may be applied in instances of smaller quantities if the individual is known to have a previous history of drug smuggling.

Commercial

See AMPS Master Penalty Document. Also refer to Part 5, Chapter 1, Commercial Seizures, Ascertained Forfeitures, and AMPS Policy and Procedures for further details.

Only conveyances that have been modified for smuggling purposes will be seized. There are no terms of release and an AMP penalty applies as well.

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ENFORCEMENT PRIORITIES

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DRUG AND PRECURSOR CHEMICAL POLICY AND PROCEDURES

Appendix B

DISTRIBUTION OF FORMS

17/10/18

EN Part 2 Chapter 6

Drugs and Precursor Chemicals

APPENDIX B

APPENDIX B: DISTRIBUTION OF FORMS

Send To:	HC/SC 3515	K 19A	K19S	BSF241
Traveller			Original	CLIENT
Adjudications		Yes	Departmental	
CBSA Office	Copy #4	Yes	Seizing Office Copy	CBSA, FILE
Intelligence	Copy #2	Yes	Intelligence Copy	
Police	Copies 1,3,5,6,7	Yes, if completed	None	N/A
Region	Photocopy	Yes	Region Copy	BOOK

Part Two

ENFORCEMENT PRIORITIES

Chapter Six

DRUG AND PRECURSOR CHEMICAL POLICY AND PROCEDURES

Appendix C

PROCEDURES FOR CANNABIS

APPENDIX C

APPENDIX C: PROCEDURES FOR CANNABIS

PURPOSE AND SCOPE

1. The purpose of this policy is to guide CBSA officers on the procedures for the interdiction of cannabis and goods containing cannabis, after the coming into force of the *Cannabis Act*, and to inform them of appropriate enforcement actions under the *Customs Act* and other Acts of Parliament.
2. This policy applies to all CBSA officers in all modes of transportation.

BACKGROUND

3. The primary objectives of the *Cannabis Act* are to legalize access to cannabis in Canada while deterring criminal activity and reducing the burden on the criminal justice system.
4. Possession of cannabis in prescribed amounts will be authorized domestically within Canadian territory. The unlawful importation and exportation of cannabis and cannabis products to and from Canada will remain a serious criminal offence.
5. Beginning October 17, 2018, in order to address any ambiguity and misunderstanding on the part of the travelling public relating to the new *Cannabis Act*, officers will be required to ask the following Primary Inspection Line (PIL) question:

“Are you bringing cannabis, or goods containing cannabis, into Canada?”

Note 1: The E311 declaration card will be updated to reflect the new cannabis-related PIL question and will be released in land, marine, and rail modes in November 2018. Officers working in air mode will continue to see the current version of the E311 until ABC kiosks are decommissioned.

Note 2: Officers working at air mode ports of entry are advised that the cannabis question will be included on ABC, PIK, and NEXUS terminals. Cannabis declarations will be recorded on the receipts generated by the kiosks.

Note 3: The cannabis question will appear with the other OGD-related questions on the new E311.

APPENDIX C

6. This PIL question is designed to emphasize a traveller's obligations under the *Customs Act* to declare any cannabis or cannabis products in their possession on entry to Canada.
7. In order to reach point of finality and promote traveller compliance, officers may ask clarifying questions to provide the traveller with a fair opportunity to comply with their reporting obligations under the *Customs Act*.
8. Officers are to be mindful of the following factors that are essential to processing travellers and cannabis interdictions following the coming into force of the *Cannabis Act* on October 17, 2018:
 - a) travellers may not be aware that the ability to access cannabis legally within Canadian territory does not provide a traveller with authorization to possess cannabis while seeking entry to Canada (at a POE);
 - b) unless the traveller is in possession of valid authorization from Health Canada (i.e. permit, exemption letter), no amount of cannabis is permitted for importation to Canada;
 - c) travellers may incorrectly assume that they are not obligated to declare cannabis in their possession if it has been legally obtained inside or outside of Canadian territory, or falls within the legal limits for possession within Canadian territory;
 - d) CBSA Enforcement and Intelligence Priorities for 2017-2020;
 - e) the objectives of the *Cannabis Act* show duality of intent, namely to prohibit unlawful importation/exportation of cannabis (with those in contravention of this particular section facing strict criminal penalties) but also to reduce the burden on the criminal justice system in respect to minor cannabis-related offences.
 - f) prescriptions for medical cannabis or medical documents authorizing the use of cannabis, foreign or otherwise, are not to be accepted in lieu of Health Canada authorizations (i.e. permit, exemption letter).

APPENDIX C

POLICY GUIDELINES

9. CBSA officers may seize a prohibited good (s.110) if it is not declared (s.12), or inaccurately declared (s. 7.1). Declared goods should not be seized under the *Customs Act* unless a *Customs Act* contravention has occurred.
10. Authority to seize cannabis, in certain circumstances when no contravention of the *Customs Act* occurred, exists under s. 489(2) of the *Criminal Code*.
11. CBSA officers have many tools at their disposal to control the unauthorized importation of cannabis and must choose the appropriate action(s) depending on the circumstances. These include:
 - a) detaining cannabis (s.101 of the *Customs Act*) in those situations where the officer deems it justified given the totality of the circumstances;
 - b) seizing cannabis (s. 110 of the *Customs Act*) in those situations where there has been a contravention of the *Customs Act* and when the officer deems it justified given the totality of the circumstances;
 - c) detaining persons under the *Customs Act* and/or the *Criminal Code* when the officer has reasonable probable grounds to suspect an offence is being, or may have been, committed;
 - d) effecting arrests under the *Customs Act* and/or the *Criminal Code* when the officer has reasonable probable grounds to believe that an indictable offence is being, is about to be, or may have been committed;
 - e) seizing conveyances used in, or as evidence of, a contravention of the *Customs Act*;
 - f) seizing other goods as evidence in respect of a contravention of the *Customs Act*; and
 - g) seizing goods and conveyances, under the authority of subsection 489(2) of the *Criminal Code*, as evidence of an offence described under another Act of Parliament (e.g. *Cannabis Act*).

Note: EN Part 5, Chapter 3 contains specific information regarding when to seize goods as evidence in these situations.

APPENDIX C

Procedures for Declared Cannabis

12. Travellers who declare cannabis or cannabis products and who are in possession of valid authorization from Health Canada (i.e. permit, exemption letter) will be permitted to import/export their cannabis and cannabis products if the officer is satisfied that:
 - a) the declared goods are the same as the goods described in the Health Canada authorization; and
 - b) the Health Canada authorization is valid and authentic.
13. Travellers who declare cannabis or cannabis products and who are not in possession of valid Health Canada authorization will not be permitted to import or export cannabis or cannabis products.
14. Travellers who properly declare cannabis are attempting to comply with their obligations under the *Customs Act*. When a person declares cannabis properly and no *Customs Act* offence has been committed, there are no reasonable and probable grounds to arrest the person for a *Customs Act* offence (i.e. smuggling pursuant to s.159 of the *Customs Act*).

declared cannabis should be
detained pursuant to section 101 of the *Customs Act* and recorded as a
“forfeiture” in ICES.

APPENDIX C

15. Declared cannabis that is not accompanied by Health Canada authorization can be detained by the CBSA and recorded in ICES using the "Forfeited Narcotics/ Controlled/Restricted Drugs/Chemicals" option in the "Personal Seizure" module.
16. The "Forfeited Narcotics/ Controlled/Restricted Drugs/Chemicals" option in ICES does not generate an enforcement history for the traveller (i.e. PIL flag).
17. ICES will continue to generate form BSF241 in addition to form HC/SC 3515 for those instances when an officer detains cannabis (ICES "Forfeited Narcotics").
18. The BSF241 is to be provided to the traveller and copies are to be distributed according to the procedures in Appendix B.
19. The procedures for transferring cannabis to the responding police agency for disposal using form HC/SC3515 are the same as those for other narcotics.

Note: The BSF241 is not required to be placed with detained cannabis as the HC/SC 3515 is sufficient for transfer and disposal procedures.
20. Conveyance penalties (i.e. terms of release) are not applied in cases where cannabis is detained, as there are no grounds to seize a conveyance.
21. Travellers who have had cannabis or cannabis products detained and recorded in ICES as "Forfeited Narcotics/ Controlled/Restricted Drugs/Chemicals" will appear in ICES queries, or should subsequent incidents of forfeitures or seizures occur.

Procedures for Undeclared Cannabis

22. There may be instances when cannabis or cannabis products are imported in contravention of sections 7.1 and 12 of the *Customs Act*. Officers may seize the cannabis and conveyance as applicable with the terms of release outlined in Appendix A.

Officers may alternately decide that seizure action is not warranted (i.e. benefit of the doubt). In the presence of factors (such as those alluded to in paragraphs 8(a) and (c) of this Appendix and paragraphs 50 to 53 of Part 2, Chapter 6 of the EN Manual), officers may use their discretion and not seize undeclared cannabis or cannabis products.

APPENDIX C

23. In instances where cannabis and cannabis products are not seized, an officer will detain cannabis using the “Forfeited Narcotics/ Controlled/Restricted Drugs/Chemicals” option in the Personal Seizure module of ICES.
24. Officers are to use good judgement and consider all factors that affect the gravity or seriousness of the contravention, when deciding how to proceed once a *Customs Act* violation is identified. The following factors to consider are non-exhaustive and may include:
 - a) the quantity of cannabis or cannabis product (note: the *Cannabis Act* allows for possession of up to 30 grams – or equivalent amount – of cannabis in Canada while continuing to prohibit its importation and exportation);
 - b) whether the traveller is from, or is coming from, an area where cannabis is legal to possess for recreational use, medicinal use, or both;
 - c) whether the traveller has a form of authorization to possess the cannabis or cannabis product, other than Health Canada authorization, (i.e. a foreign or Canadian medical authorization);
 - d) whether the officer believes that the failure to declare, or accurately report, the cannabis or cannabis products was deliberate or not, based on their interaction with the traveller;
 - e) whether the traveller has been the subject of previous enforcement action (including previous cannabis-related enforcement) with the CBSA, and can be reasonably expected to understand his or her obligations under the *Customs Act*;
 - f) whether the traveller appears to have made an effort to conceal the cannabis or cannabis products
 - g) whether the traveller could reasonably be expected to understand his or her obligations under the *Customs Act*, based on previous travel and exposure to CBSA processes.

APPENDIX C

25. Officers are reminded that following discovery of a contravention of the *Customs Act*, discretion is paramount when choosing an appropriate response; not all contraventions will result in a seizure or other enforcement action. Benefit of the doubt can often be extended to a traveller when it appears evident that the traveller was not aware their actions constituted a contravention. Traveller negligence, carelessness, or lack of knowledge, in addition to inculpatory / exculpatory statements on the part of the traveller may also be worthwhile factors to note when deciding how to proceed with a non-compliant traveller.
26. Arresting travellers who have failed to declare cannabis or cannabis products is also at the discretion of the officer. If an officer is satisfied, based on their experience, regional practices and guidelines, and nationally developed priorities for the interdiction of cannabis, that there would not likely be any criminal charges laid, the need for arrest in instances of undeclared cannabis and cannabis products is diminished. In these instances, it is expected that seizure actions will suffice as a deterrence to future incidents of non-compliance.
27. Officers are to be mindful that if a contravention has occurred, when the person is neither detained nor arrested, they continue to be subject to routine border processes and their rights under s.10 of the *Canadian Charter of Rights and Freedoms* are not triggered.
28. An officer may choose to read caution statements at any point, if there are concerns that additional offences may be discovered during the course of the examination (routine border processing). When you have reasonable and probable grounds to suspect that an offence to the *Criminal Code* has occurred, an officer should read caution statements at this time, in order to preserve the admissibility of statements made by the traveller.
29. Arrests are to be affected for cannabis-related interdictions only when:
 - a) an officer has reasonable grounds to believe an offence has been committed under the *Customs Act*, *Criminal Code*, or the *Cannabis Act* (refer to Part 6, Chapter 1 of the EN Manual for additional guidance); and
 - b) criminal charges are likely to be laid.

APPENDIX C

30. Officers are expected to be able to clearly articulate their reasons for arrest as it pertains to their authorities under:
 - a) the *Customs Act*, or,
 - b) the *Criminal Code*.
31. Officers are responsible for recording all relevant information pertaining to cannabis-related enforcement action in their Officer's Notebooks in addition to their reports in various systems (ICES, ORS). These are to be completed in a timely manner and with as much detail as is necessary including:
 - a) dates,
 - b) times,
 - c) names of persons involved,
 - d) vehicle information,
 - e) statements by the travellers,
 - f) statements by officers (including *Charter* rights and cautions),
 - g) observations by officers,
 - h) types of cannabis/cannabis product, and
 - i) quantity and/or weight of cannabis.
32. As the CBSA is responsible for monitoring and reporting on interdicted cannabis, officers will need to ensure that all interdictions (detentions, seizures) of cannabis are recorded in ICES and that the information and details therein are robust.

Note: This includes indicating when the police of jurisdiction have been contacted and whether or not they attended for the laying of criminal charges.
33. The following scenarios have been developed to assist officers in achieving the desired policy intent and to promote national consistency in the processing of cannabis interdictions at POEs following the coming into force of the *Cannabis Act*.

CUSTOMS ENFORCEMENT MANUAL

Part 2

ENFORCEMENT PRIORITIES

Chapter 8

OBSCENITY AND HATE PROPAGANDA

2017/07/07

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to administer its responsibilities with respect to the identification and classification of prohibited material fairly and responsibly, in accordance with the provisions set out in the *Customs Act*, the *Customs Tariff*, the *Criminal Code* and the related court jurisprudence, while respecting the principles and rights outlined in the *Canadian Charter of Rights and Freedoms*.
2. For the purposes of this policy, prohibited material includes obscenity, hate propaganda, and goods of a treasonable or seditious nature. Child pornography is addressed separately in Part 2, Chapter 14 of this manual.

AUTHORITIES

Customs Act

3. Section 58 – Authorizes designated CBSA officers to determine the tariff classification of imported goods at or before the time of accounting.
4. Section 60 – Allows for an importer to request a re-determination of the tariff classification of their goods within 90 days of the original classification under Section 58.
5. Section 98 – Stipulates that CBSA officers have the right to search any person who has arrived in Canada, or who is about to leave Canada, if the officer has reasonable grounds to suspect that the person has secreted on or about his person anything that would be considered contraband.
6. Section 99 – Stipulates that a CBSA officer has the right to examine goods by opening, or causing to be opened, any container or package and may take a reasonable amount as a sample.
7. Section 101 – Authorizes CBSA officers to detain goods that have been imported, or that are intended for export, until such time that the officers are satisfied that the goods have been dealt with in accordance with the *Customs Act* and any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods, and any regulations made there under.
8. Section 102 – Allows for an importer to export prohibited material.
9. Section 142 – Authorizes the disposal of prohibited material by CBSA officers in accordance with specific guidelines.

Customs Tariff

10. Section 136 - Stipulates that all goods enumerated or referred to in tariff item No. 9899.00.00 are prohibited entry into Canada.
11. Tariff Item 9899.00.00 reads, in part: Books, printed paper, drawings, paintings, prints, photographs or representations of any kind that are deemed to be obscene under subsection 163(8) of the *Criminal Code*, constitute hate propaganda within the meaning of subsection 320(8) of the *Criminal Code*, that are of a treasonable character within the meaning of section 46 of the *Criminal Code*, and are of a seditious character within the meaning of sections 59 and 60 of the *Criminal Code*.

Criminal Code

12. Subsection 46(2) – States that, without lawful authority, it is a criminal offence for anyone to communicate or make available to an agent of a state other than Canada, military or scientific information or any sketch, plan, model, article, note or document of a military or scientific character that he knows or ought to know may be used by that state for a purpose prejudicial to the safety or defence of Canada (goods of a treasonable nature).
13. Paragraph 59(4)(b) and Subsection 61(b) – State that, without lawful authority, it is a criminal offence for anyone to publish or circulate any writing that advocates the use of force as a means of accomplishing a governmental change within Canada (goods of a seditious nature).
14. Subsection 163(8) – States that any publication, a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence, will be deemed obscene (obscenity).
15. Subsections 319(1) and 319(2) – State that it is a criminal offence for anyone to communicate statements, other than in private conversation, that incite hatred or wilfully promote hatred against any identifiable group (hate propaganda).
16. Subsection 320(8) – States that any writing, sign or visual representation that advocates or promotes genocide, or that promotes or incites hatred against an identifiable group, distinguished by colour, race, religion, national or ethnic origin, age, sex, gender identity or expression, or mental or physical disability, constitutes hate propaganda.

PURPOSE AND SCOPE

17. The purpose of this policy is to outline the CBSA's position with respect to its role in the detention, determination and disposal of specific prohibited material, namely obscenity, hate propaganda and treasonable and seditious material.

Note: Hereafter, any reference to hate propaganda is intended to include treasonable and seditious material.

18. This policy applies to all employees of the CBSA and relates to both commercial and personal goods physically entering Canada through any means (e.g. postal, marine, air, land, rail).
19. The scope of this policy applies to material generated from all forms of media (e.g. audio, visual, written word, electronic) that is suspected of constituting prohibited material. Prohibited material can take many forms, including personal or commercial literature, pamphlets, DVDs, videocassettes, audio recordings, CDs, books, magazines, and numerous other formats, including electronic material that is physically stored on laptop computers, hard drives, cellular telephones, digital cameras, media cards, USB keys, etc.

Note: The CBSA is authorized to deal only with the physical importation of goods and is not responsible for electronic or other non-physical transmissions.

BACKGROUND

20. As a result of ongoing program monitoring, and to address the specific administrative concerns expressed by the Supreme Court of Canada, the classification function for obscenity and hate propaganda is centralized in the Prohibited Importations Unit (PIU) at Headquarters in Ottawa.
21. Centralizing the classification function within the PIU ensures more accurate, consistent and defensible prohibitions, through the establishment of a centre of expertise where officer education and training, time and resources, are specifically dedicated to this sensitive and specialized work.

POLICY GUIDELINES

22. CBSA officers should not hesitate to contact the PIU, at 613-954-7049 or by e-mail at piu-uip@cbsa-asfc.gc.ca, if they require assistance in handling suspect obscenity or hate propaganda.

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Obscenity and Hate Propaganda

23. CBSA officers must use all available tools to properly target and classify prohibited material, including the Technical Reference System (TRS), lookouts, bulletins and the related Memoranda D9-1-1 (obscenity), D9-1-15 (hate propaganda) and D9-1-17 (general procedures for handling obscenity and hate propaganda).
24. Electronic devices should be examined in accordance with policies related to the examination of digital devices and media.
25. CBSA officers must always remain current with the indicators of obscenity and hate propaganda, and with all other related information, by reading the related D-Memoranda, notices, intelligence bulletins, alerts, and other relevant publications.

TARGETING

26. Effective targeting is an essential element in ensuring the identification of suspect obscenity and hate propaganda.
27. Officers are reminded that the CBSA must not target importers in relation to suspect obscenity or hate propaganda. Targeting is to be based primarily on known exporters, known export locations (specific addresses or geographical areas), the nature of the goods being imported (commodities known to be suspect) and/or information disseminated through the PIU and/or Regional or Headquarters Intelligence channels.
28. Please refer to Part 3, Chapter 2 (Targeting Obscenity and Hate Propaganda) of this manual for more specific information on targeting suspect obscenity and hate propaganda.

ROLES & RESPONSIBILITIES

Border Services Officers (BSOs)

29. BSOs are responsible for:
 - a) selecting and examining shipments that appear to meet the definition of obscenity or hate propaganda as per tariff item 9899.00.00, or that are the subject of a lookout or that are selected randomly for examination;
 - b) searching the Technical Reference System (TRS) database, within the Customs Commercial System (CCS), without delay, in order to

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Obscenity and Hate Propaganda

determine whether an identical item has been previously determined by the Prohibited Importations Unit (PIU);

- c) using the most recent TRS decision relating to an identical item in order to classify the material as prohibited (i.e. TRS reflects "Prohibited: Y") by completing the header, Part A and Part B of the Form K27, or if the item is admissible (i.e. TRS reflects "Prohibited: N") immediately releasing the item, subject to the collection of any duties and taxes owing;
- d) further examining the item for the presence of the undue exploitation of sex (obscenity) or the targeting of an identifiable group (hate propaganda) in determining whether material should be immediately released, or detained for the purpose of classification, if the identical item has not been previously determined, according to the TRS;
- e) if detaining the goods for the purposes of tariff classification, where there is no identical TRS decision, the BSO will complete the header and Part A of the Form K27, and immediately forward one copy of the suspect material to the PIU for determination. [Note that goods being sent to the PIU for tariff classification should be forwarded to: Prohibited Importations Unit, 171 Slater Street, 7th Floor, Ottawa, Ontario, K1P 5H7]; and
- f) immediately releasing the item, subject to the collection of any duties and taxes owing, in cases where the item is determined by the Prohibited Importations Unit not to be prohibited.

Intelligence Officers (IOs)

30. Intelligence Officers are responsible for:

- a) assessing the validity and level of risk associated with current intelligence pertaining to importations of prohibited material;
- b) issuing regional lookouts for medium-risk to high-risk importations and for maintaining files that specifically show the link(s) to previous ruling(s) related to prohibited material, and/or current intelligence;
- c) re-evaluating importation lookouts in order to re-determine the level of risk, no less than every 90 days; and
- d) removing importation lookouts when the risk is no longer deemed to be medium to high.

Intelligence Analysts (IAs)

31. Intelligence Analysts are responsible for:

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Obscenity and Hate Propaganda

- a) setting importation targets in automated and/or manual systems for medium-risk to high-risk importations and for maintaining records;
- b) re-evaluating importation targets in order to re-determine the level of risk, no less than every 90 days; and
- c) removing importation targets when the risk is no longer deemed to be medium to high.

Headquarters - Enforcement and Intelligence Operations

32. Enforcement and Intelligence Operations is responsible for:

- a) maintaining up-to-date enforcement data;
- b) providing operational support and guidance to IOs and IAs;
- c) issuing national lookouts for medium-risk to high-risk importations and for maintaining intelligence files;
- d) liaising with and supporting the PIU in order to facilitate the identification of medium-risk to high-risk importations of obscenity and hate propaganda; and
- e) liaising with foreign customs and law enforcement agencies in order to facilitate the identification of medium-risk to high-risk producers and distributors of obscenity and hate propaganda.

Headquarters - Prohibited Importations Unit (PIU)

33. The Prohibited Importations Unit is responsible for:

- a) making all initial determinations of obscenity and hate propaganda within 30 days of the date of detention. PIU will provide written notice to the importer, generally by way of a completed Form K27 (with a copy to the port of entry) regarding the admissibility of the material. If the goods are deemed admissible, PIU will return the goods to the port of entry for release to the importer. If the goods are prohibited, PIU will provide the importer with options for abandonment, export or appeal and the goods will remain in headquarters;
- b) updating the TRS database of all commercially reliable obscenity and hate propaganda classification decisions for reference, targeting and detention/determination purposes;

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Obscenity and Hate Propaganda

- c) providing assistance to CBSA officers, IOs and other CBSA staff, in order to facilitate decision-making concerning the possible detention of suspect importations;
- d) providing training and guidance to assist personnel with the identification of suspect material and to ensure that the procedures for dealing with suspect obscenity and hate propaganda are understood and followed;
- e) monitoring the quality of decision-making, both at the detention and determination levels, and the accuracy of completed Form K27s;
- f) producing regular reports, including specific statistics, on the CBSA's work in relation to obscenity and hate propaganda;
- g) monitoring, on behalf of the CBSA, applicable legislation and court jurisprudence as it relates to obscenity and hate propaganda;
- h) developing policy and procedures, on behalf of the CBSA, as they relate to obscenity and hate propaganda, including D-Memoranda (D9-1-1, D9-1-15 and D9-1-17) and the forms K27 and K27A;
- i) providing advance opinions on the admissibility of material upon request from importers who encounter difficulty in determining whether goods are in compliance with relevant guidelines, prior to importation;
- j) making all re-determinations, at the appeal of the importer, relating to goods classified as obscenity and hate propaganda, and
- k) managing all litigation arising from a re-determination of obscenity and hate propaganda.

PROCEDURES

Detentions and Determinations

34. Specific procedures relating to the detention and determination of suspect obscenity and hate propaganda are set out in Memorandum D9-1-17, *Canada Border Services Agency's Policy on the Determination of Obscenity and Hate Propaganda*.

Control and Disposal of Prohibited Material

35. Particular care must be taken to ensure that adequate control is maintained over prohibited material until its final disposition. Obscenity and hate propaganda must always be held in bond (Queen's Warehouse).

36. Within 90 days following a determination or re-determination of obscenity or hate propaganda, importers have the right to abandon, export or appeal (administratively or to the courts).
37. Prior to determination and subject to agreement by the detaining officer, suspect goods may be abandoned to the Crown or exported. In the case of goods abandoned to the Crown, the destruction of these goods may take place immediately, provided that the importer has signed the designated abandonment area on the Form K27. Destruction must be in accordance with the provisions set out in the *Comptrollership Manual, Material Management Volume*, Chapter 5.
38. In instances where the importer requests that their prohibited obscenity or hate propaganda be exported within 90 days of the date of determination, it must be made clear to the importer that this exportation provision allows only for prohibited material to be removed from Canada under CBSA control and at the full expense and arrangement of the importer, following the normal procedures related to a controlled export from Canada, using the Form E15. All requests for the exportation of prohibited material should immediately be referred to the PIU.

Note: Canada Post's legislation prohibits the transport of prohibited goods through the mail and therefore a customs bonded carrier, in possession of a valid license issued by the CBSA, must be used to export any prohibited material that is being held inland. A customs bonded carrier has the right to refuse to carry prohibited goods and may choose to exercise this option. As a result, the export process often proves difficult to arrange and can be very costly to the importer.

39. In instances where an importer requests a re-determination of a classification of obscenity or hate propaganda, within 90 days of the date of determination, an officer of the PIU who was not responsible for the initial classification, will be responsible for handling the appeal. In instances where prohibited titles remain at the port of entry, this officer will request that the prohibited goods be removed from controlled storage and forwarded to the PIU in Ottawa for review and re-determination. Any requests for re-determination received at another CBSA location, in error, should immediately be forwarded to the PIU.
40. Prohibited goods that have not been abandoned, exported or appealed within 90 days following the date of determination are considered to be forfeit to the Crown.

41. The destruction of forfeit goods is not to take place until at least 120 days after the date of determination (30 days of grace following the statutory waiting period of 90 days).

LEGISLATIVE AND POLICY REFERENCES

42. *Customs Act*
Customs Tariff and its *Schedule* (Section XXI)
Criminal Code
Canadian Charter of Rights and Freedoms
Memorandum D9-1-1
Memorandum D9-1-15
Memorandum D9-1-17

CUSTOMS ENFORCEMENT MANUAL

Part 2

ENFORCEMENT PRIORITIES

Chapter 10

CONVENTION ON THE INTERNATIONAL TRADE OF ENDANGERED SPECIES (CITES)

23/12/04

En Part 2 Chapter 10 Convention on the International Trade of Endangered Species

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to assist in the protection of endangered or threatened plant and animal species by enforcing controls at points of importation and exportation on behalf of Environment Canada.

DEFINITIONS

2. Refer to Part 11 - Glossary.

AUTHORITIES

Customs Act

3. Section 99 authorizes the examination of any goods and conveyances a CBSA officer suspects on reasonable grounds contains goods that are in contravention of the Act.
4. Section 101 authorizes the detention of controlled goods that have been imported or are about to be exported. The officer will release the goods once he or she is satisfied that the goods have been dealt with in accordance with this Act and any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods.

Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (WAPPRITA)

5. Section 6(1) states that no person shall import into Canada any animal or plant that was taken or any animal or plant or any part or derivative of an animal or plant, that was possessed, distributed or transported in contravention of any law of any foreign state.
6. Section 6(2) states that, subject to the regulations, no person shall, except under and in accordance with a permit issued pursuant to subsection 10(1), import into Canada or export from Canada any animal or plant or any part or derivative of an animal or plant.

En Part 2 Chapter 10 Convention on the International Trade of Endangered Species

PURPOSE AND SCOPE

7. The purpose of this policy is to guide CBSA officers in the detection, interception, detention, seizure and care of illegal importations/exportations of protected or endangered plant and animal species and their parts or derivatives under the *Customs Act* and the *WAPPRIITA*.
8. This policy applies to all CBSA officers in all modes of transportation.

BACKGROUND

9. Canada is a signatory to the Convention on International Trade in Endangered Species (CITES). This Convention is an international agreement through which more than 150 countries exercise control over the import, export and transit of various plant and animal species and their derivatives, parts and products as listed in the Convention. The objective of CITES is to protect these species against overexploitation caused, in part, by international trade.
10. CITES is administered by Environment Canada. The *Wild Animal and Plant Protection and Regulation on International and Interprovincial Trade Act* (WAPPRIITA) establishes Environment Canada's permit system for plants and animals protected by CITES. The CBSA assists Environment Canada by controlling their importation and exportation.
11. There are thousands of plant and animal species protected under CITES. Each is listed according to the level of protection afforded in one of three appendices to the Convention.

Note: See Appendix A for a summary of the appendices.

12. Trade in these species is controlled by a permit system, whose requirements become stricter as a species becomes endangered (Appendix I being the most strict). This control ensures the conservation of species whose trade is permitted and protects the most endangered species.
13. The Border and Compliance and Monitoring Division, Operations Branch is responsible for D19-7-1, Convention on International Trade in Endangered Species (CITES). This memorandum outlines the policy and procedures on the control of animals and plants at customs points of entry and exit. The Agriculture, Environment and Trade Unit can be reached at 613-954-7138.
14. This chapter of the Enforcement Manual will concentrate on the enforcement actions to be taken should a shipment be non-compliant with the *Customs Act* and/or *WAPPRIITA*.

En Part 2 Chapter 10 Convention on the International Trade of Endangered Species

POLICY GUIDELINES

15. CBSA officers will contact the Canadian Wildlife Service in all situations where doubt exists whether a plant, animal, derivative, part or product (hereafter referred to as species or specimens) is controlled by CITES and requires a valid permit prior to import or export.
16. Officers will also contact Environment Canada for assistance when in doubt about a permit. A list of Environment Canada offices may be found in Appendix D of Memorandum D19-7-1 Convention on International Trade in Endangered Species. Also, Customs Memorandum D19-0-0, Directory of Other Government Departments and Agencies, can be used as a source of contact information.
17. Officers will ensure that although the format of the CITES permit may vary from one country to another, the contents comply with the requirements of the Convention.
18. Importers must be in possession of a CITES import and/or export and/or re-export permit before trade is commenced, based on the appendix under which the specimen falls. Regular CITES export and import permits issued after the fact cannot be accepted. In exceptional cases, however, Environment Canada may authorize a special import permit.
19. CBSA officers will familiarize themselves with the two main CITES enforcement tools: the Canadian CITES Control List (http://www.cites.ec.gc.ca/eng/sct5/preq_e.cfm) and the CITES Identification Guide (http://www.cites.ec.gc.ca/eng/sct5/sct5_1_e.cfm).
20. CBSA officers will be aware of the Guidelines for Transport and Preparation for Shipment of Live Wild Animals and Plants (<http://www.cites.org/eng/resources/transport/index.shtml>). These guidelines dictate the size and type of container holding the species, food and water availability and ventilation.
21. CBSA officers will contact Environment Canada immediately, if they suspect or determine that a specimen is found to be in inadequate conditions.
22. Officers will contact the Canadian Food Inspection Agency, Animal Health Branch, if a species has died (or is dying) during transport.
23. Officers will detain all suspected plants and animals being imported or exported in contravention of the *WAPPRIITA*.

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24. All pertinent facts including the times of detention, arrest, advisements and cautions must be included in the CE-1 Customs Notebook.

Health and Safety

25. Officers will ensure all health and safety standards are met, including:
- a) avoiding any handling of goods or species;
 - b) assessing potential hazards before handling cages and boxes;
 - c) avoiding handling jute bags or other soft containers that may contain venomous specimens;
 - d) avoiding handling any raw mammal skins and hunting trophies;
 - e) inspecting plants, especially artificially propagated ones, in a well ventilated area;
 - f) ensuring only those people directly involved in an inspection are present and
 - g) in the event of an accident, following standard occupational health and safety procedures and guidelines.

ROLES AND RESPONSIBILITIES

CBSA Officers

26. CBSA officers are responsible for:
- a) detecting and intercepting goods that contravene the *Customs Act* or *WAPPRIITA*;
 - b) being aware of current intelligence, trends, method of operating, concealment methods, routings, etc. associated with CITES contraventions;
 - c) possessing a general awareness of endangered plants and animals and knowing where to locate detailed information;
 - d) being familiar with current CITES permits and related documents as described in the policy guidelines;

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- e) preparing notes on all examinations and completing reports when necessary.

CBSA Superintendents

27. CBSA superintendents are responsible for:

- a) ensuring compliance with this policy and procedures;
- b) providing the necessary assistance and support to CBSA officers;
- c) ensuring that Environment Canada is contacted to make determinations of species;
- d) ensuring that CBSA investigators are immediately contacted when there are international violations of the Customs Act or WAPPRIITA and
- e) ensuring the timely circulation of all intelligence reports, lookouts, alerts and targets.

Regional Intelligence Officers

28. Regional intelligence officers (RIO) are responsible for:

- a) facilitating the exchange of timely information or intelligence concerning individuals and organizations suspected of involvement in the illegal trade of species regulated under CITES;
- b) liaising with other agencies involved in the control of species regulated under CITES and
- c) ensuring the CBSA investigator, in addition to the CWS regional authority, is informed as soon as possible of significant detentions/seizures of CITES listed fauna and flora, if local procedures have designated an RIO as the first point of contact.

CBSA Investigators

29. The Customs Investigation Division is responsible for:

- a) conducting investigations regarding *Customs Act* and WAPPRIITA violations detected at ports of entry;
- b) laying charges under either or both Acts when warranted and

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- c) consulting with other agencies on all potential prosecutions and investigations involving species regulated under CITES.

PROCEDURES

- 30. Refer to D19-7-1, Convention on International Trade in Endangered Species for the policy and procedures to determine which species need permits. Some species, while listed in CITES, may be exempt permits due to their status as personal effects, household effects or tourist souvenirs.
- 31. Ensure that the shipment is in compliance with the *Customs Act*. If there is a contravention of the *Customs Act* (e.g. smuggled plants or animals), the officer may seize the specimens under the *Customs Act* before proceeding with the enforcement of *WAPPRIITA* on behalf of Environment Canada.
- 32. Officers processing customs-compliant plants and animals must verify:
 - a) the permit quantity and description against the goods and/or the CBSA documents;
 - b) the effective date and the expiry date of the permit;
 - c) the originality of the permit (the permit is not a photocopy or forgery) and
 - d) that the document is signed by the appropriate government authority.
- 33. Examine the specimens to determine if:
 - a) the size of the container is suitable for the specimens being transported;
 - b) the design and construction of the container is appropriate;
 - c) the container is suitably labelled (e.g., "Live Animals", "Poisonous or Dangerous Animals", "This Way Up", etc.);
 - d) food and water is provided and accessible (if appropriate);
 - e) the container is adequately ventilated and
 - f) the specimens appear healthy.

Note: CBSA officers will contact Environment Canada immediately, if they suspect or determine that a specimen is found to be in inadequate condition.

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34. If all the documents and the specimens are in satisfactory order, validate the certificate and release the goods.
35. If the officer is not satisfied that the description given is consistent with the shipment, the shipment should be detained pending identification by Environment Canada.
36. If the officer suspects there are issues with the WAPPRIITA (e.g. missing certificates, suspicion of fraudulent documents, missing signatures) or if the specimens are not being cared for properly (e.g. no ventilation), the officer may detain the specimen for further inspection by the CWS and the CID, if there is a suspicion of fraud.

Travellers Imports:

37. Refer any traveller who declares a CITES controlled item for secondary examination.

Note: Personal Effects: a CITES permit is not required for CITES Appendix I, II and III items that, at the time of import or export, are part of an individual's clothing or accessories or are contained in an individual's personal baggage and that they have owned and possessed in their ordinary county of residence (provided the goods are not sold or disposed of within 90 days or are not live animals).

Tourists souvenirs: a CITES export permit from the country visited will not be required for residents of Canada returning with souvenirs of CITES Appendix II or III species, if imported in their accompanying baggage or as part of their clothing or accessories (live animals, live plants and Appendix 1 species require all appropriate CITES permits). See D memorandum 19-7-1 on CITES for more information.

38. If the officer is not satisfied that the goods have been dealt with in accordance with *WAPPRIITA*:
 - a) inform the traveller that the goods are being detained under section 101 of the *Customs Act* for the purpose of identification and if found to be a CITES listed species, they will have ninety days to obtain a release of the goods or re-export; otherwise they will be forfeited under the *Customs Act* and disposed of by Environment Canada;
 - b) give the traveller an Environment Canada "Goods Detained" pamphlet;
 - c) issue a K24 Non-monetary General Receipt (see Appendix B) and include the country of export on the document as well as whether duty and taxes were paid;

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- d) contact Environment Canada;

Note: Environment Canada is responsible for the immediate issuance of penalties in less serious offences and/or prosecution under the *WAPPRIITA*. CBSA officers have no authority to seize plants or animals on behalf of Environment Canada for violations of the *WAPPRIITA*.

- e) inform the Customs Investigations Division, who share joint authority to investigate and prosecute *WAPPRIITA* offences involving species regulated under CITES and
 - f) proceed with a progressive secondary examination, if applicable.
39. The specimens may be detained until presentation of a special import permit from Environment Canada, or until the goods are abandoned to the Crown or exported from Canada (if allowed by Environment Canada).

Note: Normally, a traveller cannot obtain a permit after the fact, but Environment Canada will make some exceptions and applications may be directed to the local office. See Memorandum D19-7-1 for details on the conditions and the addresses of the Environment Canada offices.

Exports

40. If the goods have not been dealt with in accordance with *WAPPRIITA* and there are no indicators of fraudulent intent:
- a) inform the exporter that the goods are being detained under section 101 of the *Customs Act* and that they have ninety days to obtain a permit or remove the goods from the export stream. Otherwise, they will be forfeited and disposed of by Environment Canada;
 - b) issue a K26 Export Notice of Detention (see Appendix C);
 - c) issue an Administrative Monetary Penalty, if the shipment is commercial (C005 – Permit information is incorrect, C315 – Failure to provide export permit, C345 – Failure to report goods subject to export control or C346 – Failure to answer truthfully with respect to export);

Note: Refer to Part 5, Chapter 1, Commercial Seizures, Ascertained Forfeitures and Administrative Monetary Penalties.

- d) contact Environment Canada; and

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Note: Environment Canada is responsible for the immediate issuance of penalties in less serious offences and/or prosecution under WAPPRIITA. CBSA officers have no authority to seize plants or animals on behalf of Environment Canada, but CBSA may apply an administrative monetary penalty for failing to provide required permits.

- e) inform the Customs Investigation Division, who share joint authority to investigate and prosecute WAPPRIITA offences related to CITES-listed goods.
41. The specimens may be detained until presentation of an export permit or until the goods are abandoned to the Crown or returned to the exporter (if allowed by Environment Canada).

Commercial Imports

42. If the goods have not been dealt with in accordance with *WAPPRIITA*:
- a) inform the importer that the goods are being detained under section 101 of the *Customs Act* for the purpose of identification, and if found to be a CITES-listed species, they will have ninety days to obtain a release of the goods or re-export. Otherwise, they will be forfeited under the *Customs Act* and disposed of by Environment Canada.
 - b) issue a K26, Notice of Detention and reference the cargo control document;
 - c) issue an administrative monetary penalty (C005- permit information is incorrect, C071 – failure to provide permit, or C348 – Intentional provision of false information in a permit);
 - d) contact Environment Canada and

Note: Environment Canada is responsible for the immediate issuance of penalties in less serious offences and/or prosecution under WAPPRIITA. CBSA officers have no authority to seize plants or animals on behalf of Environment Canada, but CBSA may apply an administrative monetary penalty for failing to provide required permits.

- e) inform the Customs Investigations Division, who share joint authority to investigate and prosecute WAPPRIITA offences of all detained commercial importations of CITES-listed goods.
43. The specimens may be detained until presentation of a special import permit from Environment Canada, or until the goods are abandoned to the Crown or exported from Canada (if allowed by Environment Canada).

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Detention

44. Detain specimens in a safe manner. For example, keep natural enemies away from each other. Do not keep tropical plants in a cool temperature, etc.
45. Find a suitable detention location. On occasion, a zoo, kennel or university facility may be appropriate. CBSA is responsible for the cost of detention facilities. Contact Environment Canada for guidance, if necessary.
46. When a suitable detention facility cannot be found or the animals appear stressed while the search is ongoing, officers may release detained animals on Customs Form E29B Temporary Admission Permit. A written note from Environment Canada regarding the disposition of the animals will cancel the E29B.

Note: For more information on the temporary import permit process, refer to D Memorandum 8-1-4.

47. Monitor all persons and specimens involved in the investigation to ensure their health and safety.
48. Ensure all documents and packaging are unaltered and secured for evidentiary purposes, if required.

Disposal

49. Dispose of inadmissible specimens in accordance with CITES requirements and Environment Canada's instructions, if they are eventually forfeited to the Crown.

Note: Refer to Memoranda D19-7-1 Convention on International Trade in Endangered Species (CITES) and the accompanying R19-7-1.

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REFERENCES

50. *Customs Act*
Criminal Code
Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act
CITES Appendices 1, 2 & 3 –<http://www.cites.org/eng/append/index.shtml>
CITES Species Checklist: (ultimate reference for nomenclature) -
<http://www.cites.org/eng/resources/species.html>
Identification Guide - http://www.cites.ec.gc.ca/eng/sct5/sct5_1_e.cfm
Control List 2003 - http://www.cites.ec.gc.ca/eng/sct5/preq_e.cfm
CITES homepage - http://www.cites.ec.gc.ca/eng/sct0/index_e.cfm
Memoranda D19-7-1 Convention on International Trade in Endangered Species
Memorandum D19-0-0 Directory of Other Government Departments and Agencies
Memorandum of Understanding with Environment Canada
<http://7.28.66.49/pl/organization/IIAD/FPAD/MOU/fed/E/ENVIRONMENT%20CANADA%20B2.0%2012-10-00%20.pdf>
<http://7.28.66.49/pl/organization/IIAD/FPAD/MOU/fed/E/ENVIRONMENT%20B2.1%2018-07-01.pdf>

Part 2

ENFORCEMENT PRIORITIES

Chapter 10

**CONVENTION ON THE INTERNATIONAL TRADE OF ENDANGERED
SPECIES (CITES)**

Appendix A

CITES APPENDICES

23/12/04

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APPENDIX A

CITES APPENDICES

Appendix	Species Listed in Appendix	Documents that Must Accompany the Specimen(s)
I	Endangered species.	Two documents: Import Permit and Export Permit or Re-export Certificate.
II	Species that could become endangered, if trade is not regulated.	One document: Export permit or Re-export Certificate.
III	Species that could become endangered in listing countries, if trade is not regulated	One document: An Export Permit from the country that listed the species or a Certificate of Origin from a country that did not list the species.

Part 2

ENFORCEMENT PRIORITIES

Chapter 10


**CONVENTION ON THE INTERNATIONAL TRADE OF ENDANGERED
SPECIES (CITES)**

Appendix B

NON-MONETARY GENERAL RECEIPT (K 24) SAMPLE

23/12/04

APPENDIX B

 Canada Customs and Revenue Agency / Agence des douanes et du revenu du Canada		NON-MONETARY GENERAL RECEIPT REÇU GLOBAL POUR ÉLÉMENTS NON MONÉTAIRES		Receipt no. - N° de reçu																
Received from - Reçu de		Customs office - Bureau de douane		Date YIA M DJ																
Agent for (if applicable) - Agent de (s'il y a lieu)		Original reference no. - N° de référence original		Date YIA M DJ																
DESCRIPTION OF GOODS OR CURRENCY/MONETARY INSTRUMENTS DESCRIPTION DE MARCHANDISES OU D'ESPÈCES/INSTRUMENTS MONÉTAIRES		Goods were / Marchandises ont été		<input type="checkbox"/> properly reported / correctement déclarées																
		Goods are / Marchandises sont		<input type="checkbox"/> held / retenues																
<table border="1"> <thead> <tr> <th>Qty - Qte</th> <th>DESCRIPTION (make, model, serial number) - DESCRIPTION (marque, modèle, n° de série)</th> <th>VALUE - VALEUR</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>		Qty - Qte	DESCRIPTION (make, model, serial number) - DESCRIPTION (marque, modèle, n° de série)	VALUE - VALEUR													<input type="checkbox"/> Payment of duties / Paiement des droits \$ Amount - Montant		<input type="checkbox"/> untruthfully reported / faussement importés	
Qty - Qte	DESCRIPTION (make, model, serial number) - DESCRIPTION (marque, modèle, n° de série)	VALUE - VALEUR																		
Customs officer's signature and badge no. - Signature et n° de matricule de l'agent des douanes		Date YIA M DJ		<input type="checkbox"/> Other / Autre Specify - Préciser																
ABANDONMENT CERTIFICATE - CERTIFICAT D'ABANDON I, the owner/importer of the goods or currency/monetary instruments described hereunder, abandon them to the Crown, knowing there is no recourse for subsequent claim. Je, le propriétaire ou l'importateur des marchandises ou espèces/instruments monétaires décrits ci-dessous, les cède à la Couronne en sachant que je ne peux présenter de demande ultérieure à leur égard. Signature of owner/importer - Signature du propriétaire ou de l'importateur		Date YIA M DJ		You are hereby notified that the goods listed are left at owner's risk and will be held for 40 days, after which they are subject to disposal without further notice. Goods held over 40 days may be subject to storage charges. Onz vous avise que les marchandises mentionnées sont consignées aux risques du propriétaire et qu'elles seront conservées pour une période de 40 jours, au terme de laquelle les douanes pourront en disposer sans autre avis. Les marchandises conservées pendant plus de 40 jours pourront être assujetties à des frais d'entreposage.																
TRANSFER RECORD - REGISTRE DE MUTATION Transferred to Queen's warehouse / Transféré au dépôt de douane		U.C.L. no. / N° de suivi des marchandises non redonnées		Date YIA M DJ																
Owner's signature - Signature du propriétaire		Date YIA M DJ		Witness - Témoin																
Warehouse keeper's signature - Signature de l'entrepositaire		Date YIA M DJ		Permit issued / Délivrance de permis																
Storage charges - Frais d'entreposage		Days - Jours \$		Accounting document no. / N° du document de comptabilité																
Duty charge / Coût des droits		GST - TPS \$		Reference no. / N° de référence																
Freight - Transport \$		TOTAL \$		Goods reported / Marchandises exportées																
Customs officer's signature / Signature de l'agent des douanes		Date YIA M DJ		Permit cancelled / Délivrance complétée																
Signature of the agent for the customs		Date YIA M DJ		Forfeited / Abandonnée																

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SPECIES (CITES)**

Appendix C

EXPORT NOTICE OF DETENTION (K 26) SAMPLE

23/12/04

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APPENDIX C



Canada Customs and Revenue Agency
Agence des douanes et du revenu du Canada

NOTICE OF DETENTION

AVIS DE RETENUE

Exporter/Importer - Exportateur/Importateur

Detention No. - N° de detention		
Other reference No. - Autre n° de référence		
Customs office - Bureau de douane		
Date	Y. A.	M. D. J.

Part A - Partie A

The goods described below are detained under Section 101 of the Customs Act. You are advised that these goods may not be exported from or imported into Canada until a customs officer is satisfied that these goods comply with the Customs Act and any other Act of Parliament that prohibits, controls, or regulates the exportation or importation of goods, and any regulations made thereunder.

Les marchandises décrites ci-dessous sont détenues en conformité à l'article 101 de la Loi sur les douanes. Vous êtes avisé que ces marchandises ne peuvent être exportées du ou importées au Canada sans qu'un agent de douane soit satisfait que ces marchandises sont en conformité avec la Loi sur les douanes et toute autre loi fédérale prohibant, contrôlant et réglementant les exportations ou importations, ainsi qu'à leurs

Description of goods (specify details and attach documents if available) - Désignation des marchandises (spécifiez les détails et attachez les documents disponibles)	

Shipper's reference No. - N° de référence de l'expéditeur	Location of goods - Localisation des marchandises
---	---

The goods described above are being detained for the following reasons: - Les marchandises décrites ci-haut sont détenues pour les raisons suivantes :

You are required to contact the following address concerning the requirements that have to be met. - Vous devez communiquer à l'adresse suivante concernant les exigences requises.

--

Customs office (name and address) - Bureau de douane (nom et adresse)	Badge No. - N° d'insigne
Signature of issuing officer - Signature de l'agent	

Part B - Partie B

I acknowledge receipt of this notice - J'accuse réception de cet avis

Signature	Date
-----------	------

Part C - Partie C

Disposition of the goods - Dispositions prises à l'égard des marchandises

Document No. - N° du document	Date

CUSTOMS ENFORCEMENT MANUAL

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ENFORCEMENT PRIORITIES

Chapter 11

COUNTER-TERRORISM POLICY AND PROCEDURES

30/05/04

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to detect and control individuals suspected of engaging in terrorist activities that are attempting to enter Canada.

DEFINITIONS

2. Refer to Part 11, Glossary.

AUTHORITIES

3. All procedures must be conducted in accordance with the *Charter of Rights and Freedoms*, the *Customs Act*, the *Criminal Code of Canada*, the *Youth Criminal Justice Act*, the *Anti-Terrorism Act*, and the CBSA Code of Ethics and Conduct.

Customs Act

4. Section 11.2 – The Minister may designate an area as a CBSA - Customs Controlled Area. Regulations pertaining to Customs Controlled Areas must be followed.
5. Section 11 – Requires every person arriving in Canada to report to Customs and to answer truthfully any questions asked by an officer in the performance of his or her duties under this Act or any other Act of Parliament.
6. Section 12 – Requires that all goods that are imported to Canada be reported to Customs.
7. Section 13 – Requires every person reporting goods under section 12, to present goods to an officer and answer truthfully any question asked by an officer with respect to the goods.
8. Section 98 – Stipulates that customs officers have the right to search any person who has arrived in Canada or is about to leave Canada if the officer has reasonable grounds to suspect that the person has secreted on or about his person anything that would be considered contraband.
9. Section 99 – Stipulates that a customs officer has the right to examine goods by opening or causing to be opened any container or package and may take a reasonable amount as a sample.

EN Part 2 Chapter 11

Counter-terrorism

10. Section 107.1 – Allows for Advance Passenger Information (API) data on each person to be provided before the arrival to Canada. The API data consists of: surname, first name and initials of any middle names; date of birth; citizenship or nationality; gender; passport or travel document number and reservation record locator or file number. All commercial transporters must provide an officer access to its reservation system or, upon request, provide in writing all reservation information on passengers to be carried to Canada.

Charter of Rights and Freedoms

11. Section 8 – Everyone has the right to be secure against unreasonable search or seizure.
12. Section 9 – Everyone has the right not to be arbitrarily detained or imprisoned.
13. Section 10 – Everyone has the right on arrest or detention a) to be informed promptly of the reasons therefore; b) to retain and instruct counsel without delay and to be informed of that right; and c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

Immigration and Refugee Protection Act (IRPA)

14. Section 6(1) – The Minister may designate any persons or class of persons as officers to carry out any purpose of any provision of this Act, and shall specify the powers and duties of the officers so designated.

Shared Border Accord (1995)

15. Under the Smart Border Action Plan, Canada and the United States declared their willingness to share Advanced Passenger Information (API) and Passenger Name Records (PNR) on high-risk travellers destined to either country in order to identify high-risk travellers and facilitate the flow of legitimate persons across the border.

Anti-Terrorism Act

16. Section 2(b) – a person who plays a role in the administration of criminal justice (vi) a peace officer within the meaning of any of paragraphs (b), (c), (d), (e) and (g) of the definition "peace officer", and (ix) an employee of the Canada Border Services Agency who is involved in the investigation of an offence under an Act of Parliament.

PURPOSE AND SCOPE

17. The purpose of this policy is to outline the guidelines to be followed by CBSA officers in the event of the processing of a suspected terrorist.
18. This policy applies to all CBSA officers in all modes of transportation.

BACKGROUND

19. Terrorism by definition is the unlawful use or threatened use of force or violence by a person or an organized group against people or property with the intention of intimidating or coercing societies or governments, often for ideological or political reasons. Terrorism is an international problem affecting most nations in the world either through direct acts of violence or indirectly through feelings of fear, alarm and/or, vulnerability. Canada works closely with other governments in combating this very real threat through political, economic, humanitarian, and military means.
20. The *Public Safety Act 2002* enacts a number of provisions to increase security at the border, particularly in the air mode. This Act deals with measures for implementing the Biological and Toxin Weapons Convention in order to enhance public safety.
21. Under the *Anti-terrorism Act* the Government of Canada is determined to take steps to combat terrorism and terrorist activities at home and abroad. Tough anti-terrorism measures strike an appropriate balance between respecting Canadian values of fairness and respect for human rights while helping to ensure that Canadians and the global community are better protected. The Act includes measures to identify, prosecute, convict and punish terrorist groups; provides investigative tools to law enforcement and national security agencies; and ensures that Canadian values of respect and fairness are preserved and the root causes of hatred are addressed through stronger laws against hate crimes and propaganda.
22. Under the direction of the Department of Public Safety and Emergency Preparedness, Canada has implemented the National Counter-Terrorism Plan, a principle feature of which is the coordination of Canada's counter-terrorism program in connection with threats or incidents. The plan outlines the roles and responsibilities of all levels of government as well as police services in the event of terrorist incidents. Key players in the plan at the federal level include the CBSA, the Royal Canadian Mounted Police (RCMP), Citizenship and Immigration Canada (CIC), the Department of National Defence (DND), and the Canadian Security Intelligence Service (CSIS).

23. There is no doubt that the CBSA plays an important role in protecting our country and others from terrorist threats and actions. We are our nation's first line of defence against these types of activities. In fact, a CBSA officer at the primary point of entry is the first person a potential terrorist will encounter if they attempt to enter Canada through normal channels. It should be noted that terrorists attempting to enter Canada generally pose little or no immediate threat to CBSA officers. Their main objective is simply to gain access into the country or through it, without attracting any attention, in order to accomplish their goal.
24. The successful detection, interception, and control of terrorists and terrorist related cross-border activities are dependent upon the CBSA's continued vigilance. With the continued support of the government and the citizens of Canada, the CBSA remains committed to the fight against terrorism.

POLICY GUIDELINES

25. Officers will thoroughly question, observe, and closely examine passports, immigration papers, and other travel documents, as well as goods for indications of suspected terrorist activities or connections.
26. Officers will use counter-terrorism tools to assist in targeting potential terrorists for further examination. This information will be made available for officers via automated databases.
27. Officers must keep up-to-date with information contained in targets, National Security lookouts, and alerts for all indicators that may lead to the identification and interception of suspected terrorists.
28. Officers will keep up-to-date with and thoroughly read intelligence information and other relevant publications so that they are cognizant of document manipulation and forgeries, trends, modus operandi, concealment methods, routings, current global affairs, etc. related to terrorist organizations and activities.
29. Officers will notify a superintendent as soon as possible of any contact with a known or suspected terrorist and request assistance.
30. Officers will immediately notify the Regional Intelligence Officer (RIO) responsible for counter-terrorism or the duty RIO of any contact with a suspected terrorist.

Note: The RIO will contact all external points of contact (i.e. RCMP, CSIS).

Note: The National Risk Assessment Centre is the point of contact in communicating with all International Customs Services.

31. CBSA officers are not authorized to arrest or detain suspected terrorists.
32. If a suspected terrorist is not a Canadian citizen, officers must immediately contact Citizenship and Immigration Canada (CIC) and notify the counter-terrorism RIO on duty.

Note: If there is no permanent CIC presence at a port of entry by which a suspected terrorist is entering, CBSA officers assume all powers, duties, and functions of a CIC officer under the authority of Section 6(1) of the *Immigration and Refugee Protection Act*.

33. Officers must at all times be aware of and avoid or minimize any threat to their safety and that of the public.

ROLES AND RESPONSIBILITIES

CBSA Officers

34. CBSA officers are responsible for:
 - a) identifying and intercepting suspected or known terrorists;
 - b) acting as agents for CIC if there is no CIC presence at the port of entry;
 - c) detecting, detaining and intercepting illegal materials or devices, such as chemical, biological, radiological or nuclear material, explosives or firearms and preventing their importation into or transit through Canada;
 - d) visually screening arriving passengers and conveyances;
 - e) assessing the risk associated with conveyances, passengers, and goods arriving in Canada;
 - f) possessing a general awareness of current intelligence, trends, modus operandi, concealment methods, routings, etc. associated with terrorist activities;
 - g) thoroughly reviewing all lookouts, alerts, and targets;
 - h) being familiar with current travel documentation requirements and design including travel tickets, rental agreements, passports, visas, and other identification, as well as commercial documentation requirements;

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- i) where appropriate, utilizing contraband detection equipment when detecting illegal materials, devices or contraband;
 - j) reporting the outcome of interceptions of all lookouts, alerts, and targets to the issuer and/or via an ICES Notepad entry and/or ORS Report;
 - k) taking appropriate notes on all encounters with suspected terrorists and completing detailed reports for the RIO, CBSA managers and superintendents; and
 - l) being prepared to appear in Court and testify as a crown witness, as to their dealings in these matters.
35. CBSA managers and superintendents are responsible for:
- a) ensuring when dealing with suspected terrorists that the health and safety of all staff, individuals, members of the public are protected;
 - b) ensuring the safety and security of their environment, property and intellectual assets;
 - c) ensuring compliance with all policies and procedures;
 - d) providing guidance and support to CBSA officers;
 - e) ensuring that the RIO is contacted and briefed;
 - f) ensuring the timely circulation of all intelligence reports, lookouts, alerts, and targets;
 - g) ensuring completion and timely dissemination of reports concerning suspect terrorists; and
 - h) taking corrective action for any breaches by CBSA officers of this policy and procedures.

Regional Intelligence Officers

36. Regional Intelligence Officers (RIO) are responsible for:
- a) receiving, analyzing, and disseminating intelligence in a timely manner on suspected and known terrorists, terrorist activities, and hate propaganda;
 - b) exercising discretion regarding dissemination;

- c) maintaining open communication with CBSA managers, superintendents, and officers;
- d) providing functional guidance, training and disclosure of information;
- e) liaising with other agencies involved in counter-terrorism (i.e. CSIS, RCMP, etc); and
- f) liaising with the Counter-Terrorism and Counter-Proliferation Section, Enforcement Branch.

Counter-Terrorism and Counter-Proliferation Section, Enforcement Branch

37. The Counter-Terrorism and Counter-Proliferation Section is responsible for:

- a) receiving, analyzing, and disseminating intelligence in a timely manner on suspected and known terrorists, terrorist activities, and hate propaganda;
- b) exercising discretion regarding dissemination;
- c) liaising with and ensuring effective communications with other departments and agencies involved in counter-terrorism;
- d) establishing guidelines for the CBSA on counter-terrorism measures;
- e) assisting in the development and delivery of training for both CBSA personnel and other agencies involved in counter-terrorism; and
- f) operating the Command Centre on a 24-hour basis when required. The Command Centre will be available for assistance to RIOs.

National Risk Assessment Centre, Enforcement Branch

38. National Risk Assessment Centre is responsible for:

- a) receiving, analyzing, and disseminating intelligence or information in a timely manner on suspected and known terrorists, terrorist activities, and hate propaganda;
- b) exercising all due diligence and discretion regarding information dissemination in accordance with section 107 of the *Customs Act* and the *Privacy Act*;

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- c) liaising with and ensuring effective communications with other departments and agencies involved in counter-terrorism;
- d) liaising with and ensuring effective communications as the point of contact for the United States, Department for Homeland Security, National Targeting Centre in establishing guidelines for the CBSA on counter-terrorism measures;
- e) assisting in the development and delivery of training for both CBSA personnel and other agencies involved in counter-terrorism; and operating the Command Centre on a 7/24-hour basis;
- f) acting as the international point of contact for the United States, Department for Homeland Security, National Targeting Centre;
- g) acting as the international point of contact for all international customs services; and
- h) providing support and functional guidance to officers in the field when possible.

PROCEDURES

- 39. Ensure accepted health, safety and, security precautions are taken when dealing with a suspected terrorist.
- 40. Remain calm and professional at all times.
- 41. Conduct routine primary questioning and database checks.
- 42. If the suspect is a Canadian citizen:
 - a) escort the suspect to the secondary area for further processing, if suspicion is raised during primary processing;
 - b) refer all travelling companions and/or associates;
 - c) ensure suspect persons are under constant observation or escort;
 - d) immediately notify the superintendent of any contact with a suspected terrorist;
 - e) immediately notify the counter-terrorism RIO on duty;
 - f) conduct a thorough progressively intensive examination;

- g) if there has been a *Customs Act*, *Criminal Code*, *Anti-Terrorism Act* infraction or there is an outstanding warrant on the suspected terrorist, the individual may be detained/arrested; otherwise, a CBSA officer cannot detain the individual;

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

- h) If suspicions cannot be confirmed but still exist, and the suspect must be released, notify the RIO who is responsible for counter-terrorism in your jurisdiction or the issuer of the lookout as soon as possible. In the case of a shared lookout from the United States the National Risk Assessment Centre is to be notified;

Note: The RIO will contact the RCMP and request they attend and take custody of the person as soon as possible. If the RCMP chooses not to attend or if they are unavailable, allow the person to proceed into Canada when the secondary exam is completed.

- i) for any further guidance, contact the RIO who is responsible for counter-terrorism issues in your jurisdiction;
- j) record all details in your customs notebook; and
- k) complete an intelligence report for the RIO and Targeting Unit.

43. If the suspect is not Canadian:

- a) immediately notify the CBSA superintendent of any contact with a suspected terrorist;
- b) escort the suspect to CIC for further processing if suspicion is raised during primary processing;

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Note: CIC is responsible for contacting CSIS to participate in a joint interview with the suspected terrorist. Before this interview takes place, however, the suspect will be escorted to customs secondary where the CIC officer will observe the CBSA officer conducting a baggage and/or conveyance examination under the authority of the *Immigration and Refugee Protection Act*. The CIC officer may seize any documents that could be used as evidence under the *Immigration and Refugee Protection Act* and the CBSA officer may seize any contraband under the *Customs Act*.

- c) immediately notify the counter-terrorism RIO on duty;

Note: The RIO should notify the National Risk Assessment Centre/ Command Centre, as soon as possible under these circumstances.

- d) once the examination is completed, the CBSA officer relinquishes control of the suspect to CIC;
- e) ensure suspect persons are under constant observation and request assistance from another CBSA officer to contact CIC if suspicion is raised during a secondary examination; and
- f) relinquish control of the suspect to CIC.

44. If there is no CIC officer available:

- a) Immediately notify the counter-terrorism RIO on duty;
- b) escort the suspect to secondary and conduct a baggage examination;

Note: This examination will be completed under the authority of the *Immigration and Refugee Protection Act* (IRPA), as you are now acting as a CIC officer;

Note: Refer to Part Six, Chapter Nine, Assistance to Immigration and Part Ten, Chapter One, Citizenship and Immigration Canada Memorandum of Understanding.

- c) seize any evidence of inadmissibility under the IRPA and any contraband under the *Customs Act*;
- d) interview the suspect for the purposes of determining admissibility to Canada under IRPA;
- e) if, based on the interview or secondary examination results, you suspect the individual to be inadmissible to Canada, conduct an inland removal

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and advise the suspect that he/she must re-apply for entry at a CIC-serviced office;

- f) record all details in your customs notebook;
- g) complete an ICES notepad entry; and
- h) complete an intelligence report for the RIO and CIC.

REFERENCES

- 45. *Customs Act*
Anti-Terrorism Act
Public Safety Act 2002
Immigration and Refugee Protection Act
Canadian Charter of Rights and Freedoms
Criminal Code of Canada
CBSA Code of Ethics and Conduct

CUSTOMS ENFORCEMENT MANUAL

Part 2

ENFORCEMENT PRIORITIES

Chapter 12

***Our Missing Children* POLICY AND PROCEDURES**

30/09/04

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to detect and intercept children at ports of entry that have been reported missing and/or are being abducted, and returning them to their rightful guardian(s).

DEFINITIONS

2. Refer to "Glossary".

AUTHORITIES

Customs Act

3. Subsection 163.5 (1) – Authorizes designated customs officers performing the normal duties of a customs officer at a customs office to take enforcement action pertaining to criminal offences under any other Act of Parliament.
4. Subsection 163.5 (3) – Authorizes designated customs officer to arrest a person and detain them until they can be placed in the custody of a police agency of jurisdiction.

Criminal Code

5. Subsection 279(1) – It is an offence for a person to kidnap a person with intent to confine or imprison, to transport from Canada, to hold for ransom or hold to service against the person's will.
6. Subsection 280 (1) – It is an offence for a person, other than a parent or guardian, to abduct a person under sixteen years of age.

Note: The term "guardian" includes any person who has in law or in fact the custody or control of another person.

7. Subsection 281 – It is an offence to unlawfully take, entice away, conceal, detain, receive or harbour a person under fourteen years of age with intent to deprive a parent or guardian, or any other person who has the lawful care or charge of that person.

8. Subsection 282 – It is an offence for a parent or guardian to unlawfully take, entice away, conceal, detain, receive or harbour a child under the age of 14. Persons charged under this section must have the intent to deprive a parent or guardian, or any other person who has the lawful care or charge of that person, of the child. This section applies if there is a valid Canadian custody order in place.
9. Subsection 283 (1) – The parent, guardian, or person having the lawful care or charge of a person under the age of fourteen years is guilty of abduction under this section if they take, entice away, conceal, detain, receive, or harbour that person whether or not there is a Canadian custody order in relation to that person.

PURPOSE AND SCOPE

10. The purpose of this policy is to guide CBSA officers in the detection and interception of children who are missing or have been or are in the process of being abducted and to return them to their lawful parents or guardians.
11. This policy applies to all CBSA officers in all modes of transportation.

BACKGROUND

12. The *Our Missing Children* (OMC) Program is an initiative between five federal government departments: the CBSA, the Royal Canadian Mounted Police (RCMP), Citizenship and Immigration Canada (CIC), the Department of Foreign Affairs Canada (FAC), and Justice Canada.
13. The goal of the *Our Missing Children* Program is to help ensure the safety and security of children crossing international borders and to provide intelligence services to aid in the investigation of missing children cases. Since 1986 when the CBSA officially became involved in missing children programs, CBSA officers have made many successful recoveries of missing and abducted children.

The AMBER Alert System

14. AMBER is an alert system established in the United States – and since adopted in Canada – to publicize child abductions. It uses electronic highway signs and designated local broadcasters to announce the child's name and description, and the description of any vehicle suspected to be involved in the abduction. The acronym stands for "America's Missing: Broadcast Emergency Response."

15. When child abduction occurs in a region where Amber is operating, police prepare an alert containing information such as the child's and/or abductor's description and other relevant information. A special press release is sent to television and radio stations designated as "Emergency Broadcasters" under the protocols set up during the Cold War. Getting the alert on the air immediately is a priority, as time is a factor in safe child rescues.
16. There are five categories of missing children: parental abductions, stranger abductions, runaway children, throwaway children and smuggled/trafficked children.
17. Parental abductions are the most common type, with one of the parents or legal guardians taking a child away from the other parent or legal guardian. This could involve either the non-custodial parent or guardian taking the child from the custodial parent or guardian, or the custodial parent or guardian preventing the child from seeing the non-custodial parent or guardian. Younger children are most likely to be abducted (newborn to eight years old) and both genders are equally at risk.
18. Contrary to popular belief, stranger abductions are the least common type. Persons included in this category are relatives, non-related persons known to the child, and true strangers. True stranger abductions are the most rare in Canada and usually involve sexual assault and homicide. Three-quarters of the victims of stranger abductions are female.
19. Runaway children are those who leave the home voluntarily, whereas throwaways are those who are forced from the home by their parent(s) or legal guardian. Throwaway children have run away but not been missed by, searched for, or reported to the police by their legal caretakers, are not allowed home after running away, or have been abandoned or deserted. Runaways tend to be between the ages of 12-15 and largely female while throwaways are usually 16-17 years of age and of either gender.

POLICY GUIDELINES

Identifying a Missing or Abducted Child

21. Officers will follow the instructions on an urgent border alert (such as an AMBER alert) or lookout.

Interviewing a Child

28. Officers must advise the accompanying adult of the reasons for questioning a child before interviewing the child.

29. If possible, a female officer should interview girls and a male officer interview boys.

Enforcement Action

32. Designated officers affecting an arrest of an accompanying adult will make every attempt to do so out of the visual range of the child.
33. CBSA officers will release accompanying adults and children when they are satisfied that the relationship between them is legitimate and all other customs processing is complete.

ROLES AND RESPONSIBILITIES

CBSA Officers

34. CBSA officers are responsible for:
 - a) identifying and intercepting suspected missing or abducted children;
 - b) observing, targeting, selecting, and interviewing individuals to determine if they may be involved in a potential abduction;

Note: See Appendix A for a copy of the *Our Missing Children* Recovery Report (E514).

Regional Coordinators

35. Regional Coordinators are responsible for:

- a) the ongoing training of staff pertaining to operational procedures, existing and new policies, etc;
- b) issuing and maintaining missing children border alerts received from the headquarters OMC coordinator;
- d) coordinating training sessions with the RCMP, CIC, Foreign Affairs Canada and local Canadian and American law enforcement agencies;
- e) establishing and maintaining contacts with the local police and other child find organizations;
- f) performing public outreach to community; and
- g) maintaining a record of regional recoveries.

CBSA Superintendents

36. CBSA superintendents are responsible for:

- a) ensuring compliance with this policy and procedures;
- b) providing the necessary assistance and support to CBSA officers;
- c) ensuring the timely circulation of all intelligence reports, lookouts, alerts, and targets; and
- d) taking corrective action on any breaches by CBSA officers of this policy and procedures.

Regional Intelligence Officer (RIO)

37. The Regional Intelligence Officer (RIO) is responsible for:

- a) receiving, analyzing, and disseminating intelligence and lookouts in a timely manner on suspected and known abduction cases;

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Our Missing Children

- b) collecting and evaluating raw information concerning actual, suspected and potential infractions of the *Customs Act* and other federal statutes;
- c) developing and managing case files using the principles and procedures for Case Management;
- d) liaising with other agencies involved in the OMC Program (e.g. CIC, RCMP, etc);
- e) providing functional guidance and expertise to front-line personnel; and
- f) participating in specialized activities.

The Enforcement Branch

38. The Enforcement Branch is responsible for:

- a) developing, modifying, and approving policies in accordance with court jurisprudence, related to the administration of the *Our Missing Children* Program;
- b) issuing lookouts and national alerts to CBSA offices, and the United States Department of Homeland Security regarding missing and abducted children;
- c) disseminating lookouts and alerts from other countries pertaining to missing and abducted children;
- e) providing support to the field.

PROCEDURES

Parental or Stranger Abduction

Identifying an Abducted Child

39. Conduct routine primary questioning.

42. Distribute the Tip Sheet and allow the adult and child to proceed if no further suspicions are raised.

Note: See Appendix B for the Tip Sheet which outlines procedures to follow when travelling with a child (carrying valid identification, relevant legal documents, etc.)

43. Request to see documents that explain why a child is travelling with someone other than a parent or guardian (e.g. letters or custody orders from a parent, guardian, or the court). Review the offered documents closely.
44. Proceed to additional questioning if suspicions are raised.

Interviewing a Child

49. If the absent parent or guardian cannot be contacted:
- a) Explain to the accompanying adult that you wish to interview the child.

52. Complete the *Our Missing Children* (OMC) Recovery Report (E514) and forward it to the OMC Regional Coordinator.

Note: The Regional Coordinator will forward a copy to the National Coordinator for intelligence purposes.

Note: See Appendix A for a copy of the E514.

Enforcement Action

53. Notify the originating agency if there is a lookout or an alert for the child.
54. Notify the police agency of jurisdiction if the originating agency is unable to attend.
56. Request that a designated officer make the arrest.

Note: Refer to Part 6, Chapter 7, Criminal Code Offences Policy and Procedures, Processing Persons Suspected of Abduction/Kidnapping.
57. Complete the *Our Missing Children* Recovery Report (E514).

Note: See Appendix A for a copy of the E514.
58. Call the local police agency and request that they attend and take custody of the offender.

Note: Refer to Part 6, Chapter 1, Arrest and Detention and Part 6, Chapter 2, Care and Control of Persons in Custody.
59. Keep the child safe and comfortable at all times.

Note: Recognise that you are a stranger and that they may be nervous or frightened.
60. Forward the *Our Missing Children* Recovery Report (E514) to the OMC Regional Coordinator.

Note: Information on the E514 is used for statistical purposes and is forwarded on to the OMC National Coordinator for intelligence purposes.

Runaway Child/Throwaway Child

61. Contact the originating agency or the local police, local child and family services or youth services (depending on your location) if a runaway or throwaway child is encountered. Contact your OMC Regional Coordinator if you are unsure whom to call.

Note: It is not a criminal offence to be a runaway. However, if the child is under the age of 15, CBSA officers must contact either a police agency or a youth protective agency.

62. Try to convince the child to call home, another family member, or Operation Go Home (1-800-668-4663) if youth services are not available.
63. Give the child information on Operation Go Home if they are unwilling to call.
64. Complete the *Our Missing Children* Recovery Report (E514) and forward it to the OMC Regional Coordinator.

Note: See Appendix A for a copy of the E514. This form may also be found electronically on the Intranet.

REFERENCES

65. *Customs Act*
Criminal Code
Traveller's Processing Manual, Part 2, Chapter 2
Our Missing Children Program Officer's Handbook

Part 2

ENFORCEMENT PRIORITIES

Chapter 12

***Our Missing Children* POLICY AND PROCEDURES**

Appendix A

***Our Missing Children* RECOVERY REPORT (E514)**

30/05/04

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Chapter 12

***Our Missing Children* POLICY AND PROCEDURES**

Appendix B

TIPS FOR PARENTS AND LEGAL GUARDIANS

APPENDIX B

TIPS FOR PARENTS AND LEGAL GUARDIANS

The Royal Canadian Mounted Police; Canada Border Services Agency; Citizenship and Immigration Canada; Foreign Affairs Canada; and the Department of Justice are working together to protect abducted children and runaways who are encountered crossing the Canadian border. In co-operation with other Canadian and US agencies, and with law enforcement agencies in more than 40 countries, they exchange information and assist each other in finding missing children and reuniting them with their parents or legal guardians.

Since 1986, Customs Inspectors and Immigration Officers have recovered over 1,300 runaway/abducted children at the border. These officials are on full alert for children who need protection and therefore, pay extra attention to children as they enter Canada. A child or youth traveling without proper identification, or in the company of adults other than their legal guardian, may be subjected to a more thorough interview. This additional scrutiny is aimed at ensuring the safety of the child.

The following tips may be useful in helping you avoid delays when entering Canada.

- Always carry proper identification for yourself and the child(ren), such as a birth certificate, citizenship card, passport, baptismal certificate, Record of Landing (IMM 1000), Certificate of Indian Status or Permanent Resident Card.
- If you have legal custody of the child(ren), have copies of relevant legal documents, such as custody rights.
- If you are not the parent or legal guardian of the child(ren), carry a letter of permission or authorization for you to have custody when entering Canada. A letter would also facilitate entry for any one parent traveling with their child(ren). If possible, this permission should contain contact telephone numbers for the parent or legal guardian.
- If you are traveling as part of a caravan, be sure that you are in the same vehicle as your child(ren) when you arrive at the border.

If you are traveling with children and encounter a few more questions than normal from our Customs Inspectors or Immigration Officers, please be patient. The protection and safety of children is everybody's concern.

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Our Missing Children

APPENDIX B

For more information please contact:

our missing children
c/o RCMP
National Missing Children Services
1200 Vanier Parkway, P.O. Box 8885
Ottawa, Ontario K1G 3M8
Telephone (613) 990-8585 (24h)
Facsimile (613) 993-5430

For general program information please contact 1-877-318-3576 or visit our website at
<http://www.ourmissingchildren.ca>

CUSTOMS ENFORCEMENT MANUAL

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Chapter 13

STRATEGIC EXPORT CONTROL

31/10/06

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to promote voluntary compliance with export legislation while ensuring that the legislation is fully respected. Exporters are encouraged to voluntarily comply with export control requirements by obtaining required export permits, licences or certificates in advance of any attempt to export controlled goods.
2. Where non-compliance is detected, and there is evidence that the exporter did not exercise due diligence in complying with the legislation, monetary penalties or seizure action may be effected. In addition, criminal prosecution may be warranted depending upon the circumstances of the case.

DEFINITIONS

3. Refer to Part 11, Chapter 1, Glossary.

AUTHORITIES

4. All procedures must be conducted in accordance with the *Customs Act*, the *United Nations Act*, the *Export and Import Permits Act*, and their regulations.

Customs Act

5. Subsection 95(1) requires all goods that are exported to be reported in the prescribed manner at the prescribed time and place.
6. Subsection 95(3) requires every person reporting goods under section 95 to present the goods to an officer and answer truthfully any question asked by an officer with respect to the goods.
7. Paragraph 99(1)(c) stipulates that a CBSA officer has the right to examine goods reported under section 95 by opening, or causing to be opened, any container or package and by taking a reasonable amount as a sample.
8. Paragraph 99(1)(e) stipulates that a CBSA officer has the right to examine any goods suspected, on reasonable grounds, of containing goods subject to export controls, by opening, or causing to be opened, any container or package (regardless of whether the goods have been reported for export).

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Strategic Export Control

9. Section 101 stipulates that goods tendered for export may be detained by an officer until he/she is satisfied that the goods are in compliance with the export control requirements.
10. Section 109.3 authorizes an officer to assess an administrative monetary penalty for failing to comply with designated provisions of the *Customs Act*, *Customs Tariff* and regulations made pursuant thereto.
11. Section 110 stipulates that a CBSA officer may seize goods, conveyances, or any other thing when he/she believes on reasonable grounds that the *Customs Act* or regulations have been contravened or that the goods afford evidence of a contravention.
12. Section 124 provides a CBSA officer with the authority to effect ascertained forfeitures in respect of goods and conveyances when the goods or the conveyance are not found or if the seizure would be impractical.

Export and Import Permits Act (EIPA)

13. Section 13 stipulates that an export permit is required to export all goods included in the Export Control List and to export any goods destined to a country on the Area Control List.
14. Section 15 stipulates that no person shall knowingly do anything in Canada to assist in the shipment, transshipment or diversion of goods included in the Export Control List to an ineligible destination.
15. Section 17 stipulates that no person shall wilfully supply false or misleading information in relation to an export permit application or in connection with the use of an export permit.
16. Section 24 stipulates that CBSA officers must satisfy themselves that an exporter is in compliance with the *EIPA* and its regulations before allowing any goods to be exported.
17. Section 25 authorizes CBSA officers to use all of their powers under the *Customs Act* to enforce the provisions of the *EIPA* and its regulations.

United Nations Act (UNA) and its regulations

18. The *United Nations Act* and its regulations are the main legislative authorities in place to impose trade sanctions. Current information about Canadian economic sanctions can be found on the Department of Foreign Affairs and International Trade internet site (www.dfait-maeci.gc.ca/trade/sanctions-en.asp). Most of these regulations place restrictions on the export of arms and related materials.

PURPOSE AND SCOPE

19. The purpose of this policy is to provide guidelines to be followed by CBSA officers when processing strategic goods, which are known or suspected, to be subject to export controls. Strategic goods and technologies include arms, ammunition, implements of war, weapons-related materials or any goods or technologies whose unauthorized export might be contrary to Canadian security, political and international interests.
20. This policy applies to CBSA officers dealing with commercial export shipments in all modes of transportation. For export infractions involving travellers, refer to Part 5, Chapter 2, Travellers Seizures and Ascertained Forfeitures.

BACKGROUND

21. Canada is a committed participant in all international regimes aimed at preventing the spread of weapons of mass destruction and other destabilizing technologies. The proliferation of chemical, biological and nuclear weapons and their delivery systems has a destabilizing effect on peaceful regional and global relationships and is therefore considered a threat to the security of Canada.
22. The numerous terrorist attacks since 2001 and the reports that terrorists are trying to acquire weapons of mass destruction, has caused Canada and other nations to be concerned about unconventional threats from previously unknown entities.
23. With this in mind, the focus of Canada's counter proliferation efforts includes preventing the unauthorized export of strategic goods and technology to individuals, organizations and countries of concern for weapons proliferation.
24. The *EIPA* and the *UNA* are the main legislative instruments that allow the government to determine which goods should be controlled for export from Canada. The *EIPA*'s export controls mainly apply to strategic goods and technologies. Other legislation is used to control non-strategic goods, including endangered plants and animals, rough diamonds, cultural property and environmental waste. The *UNA* mainly applies trade sanctions. Goods are controlled for one or more of the following reasons:

- a) *To fulfill Canada's bilateral obligations:* Items or their components that were produced or manufactured in the United States, and imported into Canada, are controlled because Canada has made an agreement with the United States to monitor the export of these items to non-US destinations.
 - b) *To meet international counter proliferation commitments:* Counter proliferation regimes such as the Missile Technology Control Regime, the Australia Group and the Nuclear Suppliers Group define goods that should be controlled to prevent the spread of weapons of mass destruction and delivery systems. Canada has agreed to include those goods on its list of goods and technologies controlled under the *EIPA*.
 - c) *To comply with international sanctions:* The *UNA* is one of the most important mechanisms in Canada to impose trade sanctions and it includes controls on goods destined to certain countries to meet our commitments under United Nations or other international sanctions regimes.
25. CBSA is responsible for enforcing export control requirements. Dedicated export control teams are in place in strategic locations throughout Canada to conduct export enforcement based on the principles of risk management and intelligence-based targeting.

POLICY GUIDELINES

- 26. Export control officers will facilitate the movement of goods by selective enforcement based on risk management principles.
- 27. Officers will closely scrutinize all shipments, believed or suspected on reasonable grounds, to contain goods subject to export controls, as well as all shipments destined to countries, organizations or individuals of concern for weapons proliferation.
- 28. Officers will use export control tools and resources to assist in targeting potential shipments for further examination. Intelligence information will be made available to officers via the Integrated Customs Enforcement System (ICES) and via regional intelligence officers assigned to the export control portfolio.
- 29. Officers must keep up-to-date with information contained in targets, export control lookouts and alerts to facilitate the recognition of all indicators that may lead to the identification and interception of shipments of controlled goods.

30. Officers will keep up-to-date with and thoroughly read, intelligence information and other relevant publications so that they are cognizant of document manipulation techniques, methods of operating, concealment methods, transshipment routings, current global affairs, etc. related to weapons procurement and other illegal export activities.
31. Officers will provide the Strategic Export Control Section, with details concerning any shipment suspected to be in contravention of export control legislation.
32. Officers will notify the regional intelligence officer (RIO) responsible for export control and/or the local Intelligence office, of any shipments suspected to contain weapons of mass destruction or related materials, or of any significant export-related detentions, seizures or queries.
33. Officers must at all times be aware of and avoid or minimize any threat to their safety and that of the public.
34. Enforcement action in the form of detention, seizure, ascertained forfeiture and/or administrative monetary penalties may be taken against non-compliant exporters once a point of finality has been reached. The point of finality represents the stage in the exporting process at which it has been demonstrated conclusively the intent to export specific goods from Canada. Refer to Customs Memorandum D20-1-1 regarding when the point of finality is reached for export control under the *Customs Act* and the *EIPA*.

ROLES AND RESPONSIBILITIES

CBSA Officers

35. CBSA officers tasked to the export control function are responsible for:
 - a) possessing a general awareness of current intelligence, trends, *modus operandi*, concealment methods, routings, etc. associated with weapons proliferation and other illegal export activities;
 - b) referring to the booklet "The Guide to Canada's Export Controls" to help target shipments;
 - c) thoroughly reviewing all export control lookouts, alerts and targets;
 - d) examining export documentation prior to and after the departure of goods from Canada;
 - e) conducting physical exams of commercial shipments;

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- f) detaining shipments suspected of non-compliance with export controls;
- g) providing details to the Strategic Export Control Section of any shipment suspected of contravening export controls;
- h) contacting exporters to advise of detained shipments or to obtain additional information about goods to be exported;
- i) issuing Administrative Monetary Penalties (AMPs), or initiating seizures with or without terms of release, depending on the circumstances;
- j) notifying RIOs and/or Intelligence offices of suspected shipments of weapons of mass destruction, related materials or significant export-related detentions, seizures or queries;
- k) reporting the outcome of interceptions of all lookouts, alerts and targets to the issuer and/or via an ICES Notepad entry and/or ORS Report;
- l) providing support to the RIO for export-related intelligence collection;
- m) referring serious export violations to their regional Investigations section for further investigation and potential prosecution (via the RIO unless local procedures state otherwise); and
- n) being prepared to appear in court and testify as a crown witness, in their export control enforcement activities.

CBSA Superintendents

36. CBSA superintendents who oversee export control teams are responsible for:
- a) providing guidance and support to CBSA officers;
 - b) ensuring compliance with all policies and procedures;
 - c) ensuring the timely circulation of all intelligence reports, lookouts, alerts, and targets;
 - d) implementing and coordinating special projects, along with the RIO; and
 - e) ensuring the flow of intelligence between the export control team and the RIO is maintained.

Regional Intelligence Officers

37. Regional intelligence officers (RIOs) assigned to the export control portfolio are responsible for:
- a) cultivating sources and informants with information about suspected violations of export legislation;
 - b) issuing and maintaining lookouts;
 - c) ensuring compliance with policies and procedures;
 - d) implementing and coordinating special projects;
 - e) assisting in gathering evidence in support of export violations;
 - f) being prepared to appear in court and testify as a crown witness regarding export control enforcement activities;
 - g) receiving, analyzing, and disseminating intelligence in a timely manner on companies and individuals known or suspected to be involved in illegal export activities;
 - h) maintaining open communication with CBSA managers, superintendents and officers;
 - i) providing functional guidance, training and advice to export control teams;
 - j) developing and maintaining effective working relationships with other agencies involved in Canada's counter proliferation efforts (i.e. RCMP, CSIS etc);
 - k) liaising with the Strategic Export Control Section; and
 - l) liaising with the CBSA investigations division when an exporter is under investigation or an exporter may be prosecuted because of a *Customs Act* or *EIPA* offence.

Regional Intelligence Analyst

38. The regional intelligence analyst is responsible for analyzing tactical, operational and strategic intelligence data and preparing intelligence reports on trend analysis.

Strategic Export Control Section, Enforcement Branch

39. The Strategic Export Control Section, is responsible for:

- a) providing functional guidance and direction to regional export control teams;
- b) coordinating all communications between CBSA and the Department of Foreign Affairs and International Trade (DFAIT), Statistics Canada, the Canadian Nuclear Safety Commission, the Department of National Defence and other federal or international entities involved in controlling exports;
- c) providing intelligence liaison between CBSA and the headquarters of the RCMP, CSIS and the Department of National Defence in counter proliferation matters;
- d) receiving, analyzing and disseminating intelligence in a timely manner on companies and individuals, known or suspected, to be involved in illegal export activities;
- e) developing guidelines, strategies and priorities for CBSA's export control program; and
- f) assisting in the development and delivery of training for both CBSA personnel and other agencies involved in counter proliferation.

The Investigations Division, Enforcement Branch

40. The investigations division is responsible for:

- a) conducting investigations of alleged violations of the *Customs Act* and the *EIPA* and the *UN Act*;
- b) executing search warrants in support of investigations;
- c) working with DFAIT and the Department of Justice to initiate prosecutions;
- d) prosecuting alleged violators of the *Customs Act*; and
- e) assisting foreign border administrations with any Canadian components of their investigations of border offences; and

- f) providing investigation-related training to export control teams and intelligence officers (e.g. how to handle physical evidence or how officer actions impact successful investigations and prosecutions).

Export Controls Division, DFAIT (International Trade)

41. The Export Controls Division of DFAIT is responsible for:

- a) administering the export provisions of the *EIPA*;
- b) reviewing export permit applications received from exporters, and determining if a permit should be issued;
- c) consulting with other government departments concerning politically-sensitive or militarily-sensitive export permit applications;
- d) conducting technical assessments of export shipments detained by CBSA to determine if an export permit is required;
- e) consulting with CBSA regarding enforcement action in cases where an export shipment is determined to be in violation of the *EIPA*; and
- f) liaising with CBSA investigators in cases being considered for prosecution under the *EIPA*.

The Department of Foreign Affairs and International Trade (Foreign Affairs)

42. The Department of Foreign Affairs and International Trade (DFAIT) is responsible for administering the *United Nations Act*, which imposes trade sanctions and liaising with CBSA investigators and/or the RCMP in cases being considered for prosecution under the *UN Act*.

PROCEDURES

Documentation Review

- 43. Not all goods require an export declaration. There are several formats in which an export declaration may be submitted to the CBSA. For details about documentary requirements for exports, please refer to Memorandum D20-1-1, *Export Reporting*. Additional details about documentary requirements for goods controlled under the *EIPA* can be found in Memorandum D19-10-3, *Export and Import Permits Act, Exportations*. Also see 19-11-1, *United Nations Act – Trade Sanctions*.
- 44. When goods are tendered for export, officers should ensure that:

- a) all required documentation has been submitted for the shipment;
 - b) all documentation is complete; and
 - c) the documentation has been submitted to the CBSA in accordance with the reporting timeframes specified in the *Reporting of Exported Goods Regulations*.
45. Export documentation should be reviewed to ensure the shipment is in compliance with export control requirements. If an export permit has been presented, CBSA officers should compare the permit and export declaration to ensure the following:
- a) the permit has a permit number;
 - b) the permit is valid and has not expired;
 - c) the exporter and consignee named on the permit are the same as the exporter and consignee named on the export declaration;
 - d) the goods listed on the export permit are the same as those listed on the export declaration;
 - e) the quantity on the export declaration does not exceed the quantity listed on the permit;
 - f) the permit has been signed by a DFAIT permit officer; and
 - g) the value and quantity of the shipment is recorded on the permit.
46. In cases, where an export permit has been amended, a copy of the amendment letter must be presented with the export permit before the goods may be released.
47. Commercial shipments are often accompanied by additional documentation that may be reviewed by the CBSA officer to ensure the export is in compliance with Canadian legislation. This documentation may include ship manifests, air waybills, bills of lading, house bills, commercial invoices, certificates of origin, letters of credit, purchase orders and other documents showing information on shipping values, contents and destination. CBSA officers who detect a combination of any of the following documentary indicators should subject the shipment to additional scrutiny:

Note: This list is not exhaustive – other documentary indicators may be detected.

- a) discrepancies between documents concerning the exporter, the consignee, the description of the goods or their final destination;
- b) exporter, consignee, freight forwarder or transportation company has been the subject of past enforcement action;
- c) exporter, consignee, freight forwarder or transportation company is the subject of a lookout;
- d) intelligence is available concerning the exporter, consignee, freight forwarder or transportation company;
- e) exporter's name is misspelled;
- f) a freight forwarder or transportation company is identified as the exporter;
- g) a freight forwarder, transportation company or trading company is identified as the consignee;
- h) an exporter or consignee is an individual, but a commercial quantity of goods is being shipped;
- i) an exporter's or consignee's business is not compatible with the nature of the goods being shipped (i.e. laboratory equipment being sent to a construction company);
- j) exporter's or consignee's address is incomplete or is listed as a P.O. Box, a residential address or the location of a mailbox rental business (i.e. Mailboxes Etc.);
- k) the consignee is located in a country appearing on the Area Control List, or in a risk country for diversion or transshipment;
- l) the goods are destined to a country, organization or facility of concern for weapons proliferation;
- m) the declared quantity, weight, value or insurance coverage is illogical or unusually high or low for the commodity being shipped;
- n) vague description of the goods;
- o) there are indicators that goods are manufactured to military specifications;

- p) the packaging is incompatible with the nature of the goods;
- q) shipment is prepaid or cash paid;
- r) routing is geographically and/or economically illogical;
- s) instructions requiring "rush delivery" or "hold for pick up," or consignee contact instructions consisting of only a phone number; or
- t) transshipment costs are paid by a party not involved with the freight movement.

Examination of Goods

48. A CBSA officer should examine goods, if he/she suspects that the goods are subject to export controls. The examination can be done because of a document review, a gamma-ray or VACIS scan or other information. The examination of the goods must be thorough and sufficient information must be collected to allow DFAIT to establish the control status of the goods.
49. The RIO will provide assistance in obtaining background checks or intelligence.
50. An export control examination should focus on physical indicators that can demonstrate whether or not the exporter contravened export legislation. Physical indicators may also be used to complement indicators found during a review of the export documentation. Physical indicators include:
 - a) commodity in the container is different than what is indicated on the export declaration or manifest;
 - b) one or more boxes are different from the rest of the shipment (packaging, colour, weight, size, shape, content);
 - c) special markings on boxes (i.e. underlining, tape, marker, words, names of cities or villages in another country than the declared destination, different consignee, different consignee address, indication of previous shipments including airway bill numbers);
 - d) excess boxes within the shipment;
 - e) contents are unusually bulky or heavier than declared;
 - f) unclaimed package;

- g) inconsistent packaging within the shipment, or the packaging is unusual for declared commodity;
 - h) container type is inconsistent with declared commodity;
 - i) over-packaging;
 - j) discovery of other export or shipping documents within the container;
 - k) altered labels (i.e. appear removed, portions missing, sticker applied on top of label, origin markings on box exteriors are removed or disguised);
 - l) no markings as to the origin of the goods;
 - m) items appear to be altered (i.e. new screws on back cover, different heads on some screws); and
 - n) no technical literature with technological goods.
51. When conducting an examination, the examining officer must accurately record (preferably in the officer's notebook) the contents of the shipment. The officer's notes should include a description of the contents of each box within the examined shipment.
52. Useful information that may be gathered during an examination includes any technical literature found, markings of the goods (including manufacturer, model, name of item, serial numbers, manufacture date and origin), and documents or markings indicating that the shipment is destined to a place other than the one declared. Photographs should be taken where the pictures would identify attempts at concealment, or intent to circumvent controls.

Detention of Goods

53. Goods may be detained, if there are indicators, from the documentation review or the physical examination, to suggest that the shipment is in contravention of export control requirements. For example, the following situations may lead to goods being detained:
- a) review of the export documentation indicates that the goods are subject to permit requirements and no permit was supplied;
 - b) the exporter presents an invalid permit, an expired permit, or a permit that appears to have been tampered with;

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- c) examination reveals a discrepancy between the actual goods and the goods declared;
 - d) the permit supplied does not cover the goods exported; or
 - e) commodities are unknown to the CBSA officer and require further examination by a specialist to determine their control status.
54. The following procedures apply to the detention of goods tendered for export:
- a) after examination, seal the boxes, mark the tape and box with initials and badge number, and affix detention stickers to the shipment;
 - b) create a manual K26 detention notice for signature by a representative at the warehouse, to ensure that they are aware of the detention and the goods are not released accidentally for export. If the warehouse where the detention was undertaken has a secure area to store CBSA detentions, have the freight moved to that location;
 - c) input the detention into ICES and generate a K26 detention notice to provide to the exporter, if requested. If the detention is made at a non-automated port, prepare a detention package and number it according to the manual numbering sequence allotted by the port;
 - d) fax the detention package to the Strategic Export Control Section and the RIO. The detention package includes the export declaration, supporting documentation, manifest, K26 Detention Notice, ICES printout, technical specifications and photographs, if available;
- Note: Communication with the RIO varies by region and officers should follow the local operating procedures. For example, in some locations, the procedure is to send only significant cases to the RIO. In other locations, the procedure is to send only the ORS report rather than the full paper detention package.
- e) advise the exporter of the detention by telephone and send a copy of the K26 Detention Notice to the exporter by registered mail (or by fax, if a fax is requested);

- f) the Strategic Export Control Section will provide all relevant information to DFAIT to obtain a determination of whether the goods are controlled under the *EIPA* (or *UNA*). If DFAIT requires additional information about the goods, this will be communicated to CBSA officers via the Strategic Export Control Section;
 - g) in some cases, CBSA officers may need to contact the exporter to obtain additional technical specifications or missing documentation;
 - h) CBSA officers should ensure the ICES narrative report is complete and contains sufficient detail to support allegations that an infraction has occurred; and
 - i) CBSA officers may discuss the file with the RIO for further findings to support the control status of the goods.
55. Detained goods remain under CBSA control pending determination of their control status and until all export control requirements have been met. There is no avenue of appeal available to the exporter while the goods are under detention.
56. If DFAIT assesses the goods are not controlled under the *EIPA* (or *UNA*), they may be released for export as long as all reporting and documentary requirements have been met.
57. To release the goods, a CBSA officer will sign the K26 Detention Notice to indicate that the shipment may be released for export, and arrangements should be made with the warehouse to have the goods re-enter the shipment process.

Enforcement Actions with terms of release

58. CBSA officers may seize with terms of release or apply and administrative monetary penalty when:
- a) the *Customs Act* or the *EIPA* was contravened;
 - b) the Strategic Export Control Section has confirmed that release would not pose a security risk; and
 - c) no prosecution is pending.

59. CBSA officers will apply an AMP up to the limit of \$25,000, or if the limit is exceeded, seize the goods and offer terms of release. Officers will calculate the amount to be paid using the same calculation method as would be used if an AMP was applicable.

Releasing the goods for export

60. CBSA officers will release goods for export when:
- a) export permits have been obtained, and the exporter has provided all necessary documentation to DFAIT and CBSA; and
 - b) the exporter has a paid the terms of release for any applicable seizure.
61. Do not release goods for export when they have been seized with no terms of release.

Releasing the goods to the exporter

62. In some cases, an exporter may decide not to complete their export transaction once he/she learns that an export permit is required for the goods under detention.
63. CBSA officers will return the goods if:
- a) the exporter requests to retract the export; and
 - b) the goods were not seized with no terms of release.
64. If the goods are to be returned, CBSA officers will follow the following steps:
- a) if the local operating procedure so specifies, request that the exporter sign a withdrawal request as per the following example.

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Canada Border Services Agency
Export Control Unit
Address
Phone and fax
Date

REQUEST FOR EXPORT WITHDRAWAL OF GOODS UNDER DETENTION

This is to request the return of goods, manifested on air waybill # _____ and detained under detention # _____. It is understood that these goods are controlled under the *Export and Import Permits Act* and an Export Permit is required from International Trade Canada, Export Control Division, 125 Sussex Drive, E, C-6 (EPE), Ottawa, Ontario, K1A 0G2, (613) 996-2387. Therefore, it is agreed that there will be no attempt to export these goods or similar goods in the future without the required Export Permit.

Date
Company Name
Position
Name
Signature

- b) if not already done, issue any applicable AMP (or seizure with terms of release if the AMP exceeds \$25,000);
- c) advise all parties of the decision to withdraw;
- d) terminate the detention and release the goods back to the exporter, prior to payment of the AMP or after payment of the terms of release of a seizure;
- e) write on the waybill and the K26 Notice of Detention that the shipment may be returned to the exporter, but export is not permissible;
- f) if a Request for Export Withdrawal was signed, fax a copy of the form to the Export Control RIO and the Strategic Export Control Section and keep the original on file to support future enforcement actions should a CBSA officer find that the exporter is attempting to export like goods, through the same or another carrier, without proper documentation.

Seizing goods as forfeit

65. CBSA officers will seize as forfeit and apply an AMP for contraventions C025, C031, C345, C346 and C348, C354, C358, C398, C360 C361, C366 and C367 when the following goods are involved:
 - a) Strategic goods whose export would cause a security risk as determined by the Strategic Export Control Section;
 - b) Firearms and all goods classified under tariff item 9898.00.00 (prohibited weapons, devices, munitions, and parts or components); and
 - c) Alcohol, tobacco, drugs or child pornography.
66. CBSA officers will seize goods as evidence when advised to do so by the Investigation Division, who will first consult with the Strategic Export Control Section.
67. The following steps should be taken, if seizure with no terms of release is under consideration:
 - a) the Strategic Export Control Section will receive a determination from DFAIT which states that the goods in question are controlled under the *EIPA* or *UNA* and require a permit for export;
 - b) if appropriate, the Strategic Export Control Section will discuss the case with DFAIT and seek concurrence for seizure as forfeit;
 - c) the Strategic Export Control Section and RIO will involve the Investigations Division early in the process. Investigations will advise on the correct procedures to follow to ensure viable evidence. Investigations will also provide functional guidance to the CBSA officers and RIO's to ensure no CBSA officers inadvertently request and obtain information outside the auspices of legal search under the Charter of Rights and Freedoms. Despite best intentions, this could jeopardize a successful prosecution;
 - d) DFAIT will provide the Strategic Export Control Section with written confirmation that they would like the goods to be seized with no terms of release. The Strategic Export Control Section will provide a copy of this written request to the CBSA officer, who will complete the seizure process;
 - e) CBSA officers will gather all available information concerning the nature of the infraction, any past enforcement actions involving the exporter, and any other information that would support prosecution of the exporter;

- f) CBSA officers will complete a Notice of Penalty Assessment or a seizure report in ICES and generate a K19 Seizure Receipt;
- g) When the goods are seized as evidence, the CBSA officer will also complete an E352 Evidence of Seizure Receipt which states that the goods have been seized under section 489(2) of the Criminal Code, or section 110 of the *Customs Act*, as it is believed on reasonable grounds that the goods will afford evidence of an offence;
- h) CBSA officers will contact the warehouse and inform them that the goods are under seizure, providing a copy of the K19 receipt as required;
- i) CBSA officers will arrange for storage of the goods in accordance with regional procedures;
- j) CBSA officers will contact the exporter or his/her agent and inform them that the goods have been seized with no terms of release and provide a copy of the K19 and E352 via fax and registered mail; the *Customs Act* seizure can be appealed and the K19 will provide the exporter with information concerning procedures and timeframes for appeal;
- k) CBSA officers will forward a copy of the seizure package to the RIO for review and follow-up;
- l) the RIO officer will forward a copy of the seizure package to the Customs Investigations Division

Note: The file is generally referred through the RIO to avoid duplication, but in some locations, the CBSA officer contacts the investigator directly.

United Nations Act Contraventions

68. Procedures for offences under the *UNA* can differ from offences under the *EIPA* in that either the CBSA or RCMP may prosecute the offences. Where DFAIT has determined that there is an infraction of the *United Nations Act*, DFAIT will inform the Strategic Export Control Section, who will then inform the RIO. The RIO will inform the Customs Investigations Division. DFAIT will also inform the Department of Justice Legal Branch of their findings. The Department of Justice and the Royal Canadian Mounted Police (RCMP) may proceed with the execution of a seizure, laying of charges and prosecution for offences under the *United Nations Act*. The CBSA officer must cancel the detention notice with a K129 Exhibit Control Form, which authorizes the transfer of the goods to the RCMP. The RCMP will then document the seizure under the *UNA*.

Ascertained Forfeiture after export

69. In some cases, document verification will occur after the goods have been exported from Canada. If an exported shipment is suspected of being controlled, a copy of all available documentation should be forwarded to the Strategic Export Control Section with a request to query DFAIT concerning the control status of the goods.
70. If, based on the available documentation, the queried goods are determined to be controlled under the *EIPA*, AMPs or ascertained forfeiture may be applied in respect of the shipment. Ascertained forfeitures rely on a different standard of evidence, and require guidance from the Customs Investigations Division when they are being considered.

REFERENCES

71. *Customs Act*
Export and Import Permits Act
United Nations Act
 D19-10-3, *Export and Import Permits Act*, Exportations
 D19-11-1, *United Nations Act* – Trade Sanctions
 D20-1-1, Export Reporting
 D22-1-1, Administrative Monetary Penalty System

CUSTOMS ENFORCEMENT MANUAL

Part 2

ENFORCEMENT PRIORITIES

Chapter 14

CHILD PORNOGRAPHY

11/21/11

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POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to interdict suspected child pornography material, in accordance with the provisions set out in the *Customs Act*, the *Customs Tariff*, the *Criminal Code of Canada* and court jurisprudence. This policy addresses only the issue of child pornography. Obscenity and hate propaganda are addressed separately in Part 2, Chapter 8 of this manual.
2. It is the policy of the CBSA to give preference to prosecution under the *Criminal Code* rather than prosecution under the *Customs Act* due to the extremely serious nature of the crime, however there are some situations where *Customs Act* charges may be laid.

AUTHORITIES

Customs Act

3. Section 98 – Authorizes officers to search any person who has arrived in Canada, or who is about to leave Canada, if the officer has reasonable grounds to suspect that the person has secreted on or about his person anything that would be considered contraband.
4. Section 99 – Authorizes an officer to examine goods by opening, or causing to be opened, any container or package and may take a reasonable amount as a sample.
5. Section 101 – Authorizes officers to detain goods which have been imported, or that are intended for export, until such time that the officers are satisfied that the goods have been dealt with in accordance with the *Customs Act* and any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods, and any regulations made there under.
6. Section 107 – Authorizes provision, use, and disclosure of customs information to prescribed persons under prescribed circumstances.
7. Section 110 – Authorizes officers to seize goods and conveyances that they believe, on reasonable grounds, are in contravention of the *Customs Act* or the associated regulations; also authorizes seizure of anything that they believe will afford evidence of the contravention.

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Child Pornography

8. Subsection 119.1(1) stipulates that the Minister may authorize an officer to sell, destroy or otherwise deal with goods that have been seized under the *Customs Act*.
9. Section 142 – Authorizes the disposal of abandoned or forfeit goods in accordance with specific guidelines.
10. Section 159 – Makes it an offence to smuggle into Canada, whether clandestinely or not, any goods the importation of which is prohibited, controlled or regulated by or pursuant to the *Customs Act* or any other Act of Parliament.
11. Section 160 – Contains the general offences and punishments relating to violations under the Customs Act.

Customs Tariff

12. Section 136 - Stipulates that all goods enumerated or referred to in Tariff Item No. 9899.00.00 are prohibited entry into Canada.
13. Tariff Item 9899.00.00 - Includes all photographic, film, video or other visual representations, including those made by mechanical or electronic means, or written material, that are child pornography within the meaning of section 163.1 of the *Criminal Code*.

Criminal Code

14. Subsection 7(4.1) – deems sexual offences against children committed outside of Canada (including “child sex tourism”), to be committed in Canada.
15. Subsection 163.1(1) – Defines child pornography as:
 - a) a photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means;
 - i) that shows a person who is or is depicted as being under the age of 18 years and is engaged in or is depicted as engaged in explicit sexual activity, or
 - ii) the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of 18 years; or

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- b) any written material or visual representation that advocates or counsels sexual activity with a person under the age of 18 years that would be an offence under this *Act*; or
 - c) any written material whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a person under the age of eighteen years that would be an offence under this *Act*; or
 - d) any audio recording that has as its dominant characteristic the description, presentation or representation, for a sexual purpose, of sexual activity with a person under the age of eighteen years that would be an offence under this *Act*.
16. Subsection 163.1(6) – Provides defence for a “legitimate purpose related to the administration of justice or to science, medicine, education or art” and “does not pose an undue risk of harm to persons under the age of eighteen years”.
17. Subsections 163.1(2), (3), (4), (4.1) – State that it is an offence to make, distribute, sell possess, or access child pornography.
18. Subsection 172.1(1) – States that it is an offence to use a computer to communicate with children for the purpose of facilitating the commission of a sexual offence.

PURPOSE AND SCOPE

19. The purpose of this policy is to outline the CBSA’s position with respect to its role in the interception, identification, detention, disposal and investigation of offences relating to the importation of child pornography.
20. This policy applies to all employees of the CBSA and relates to goods entering Canada through all modes.

BACKGROUND

21. Section 163.1 of the *Criminal Code* was created to make it an offence to possess and/or import material determined to be child pornography. The *Custom Tariff* was also amended to complement the changes to the *Criminal Code* with respect to child pornography. In February 1997, the World Customs Organization declared child pornography to be “contraband”.
22. Since the inception of section 163.1 in 1993, several Bills have been passed in the House of Commons resulting in Criminal Code amendments relating

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to child pornography and child sexual exploitation. These Acts were passed with the objective of further protecting children from exploitation.

23. Bill C-27, "An Act to Amend the Criminal Code" in relation to child prostitution, child sex tourism, criminal harassment, and female genital mutilation, was proclaimed into force on July 27, 1997. Bill C27 extended the jurisdiction of the already existing child sex and child pornography laws making all of them extraterritorial.
24. Enacted July 23, 2002, Bill C-15A brought into force child exploitation laws dealing with two main issues:
 - a) Child pornography on the Internet, making it an offence to transmit or send child pornography from one person to another, post or link to child pornography on a website, and export child pornography;
 - b) Using the Internet to lure children.
25. Bill C-2, which came into force November 1, 2005, broadened the definition of child pornography to include both written and audio material whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a person under the age of 18 years that would be an offence under the *Criminal Code*. As a result, written material no longer has to advocate or counsel illegal sexual activity with a person under the age of 18 to fall under the definition of child pornography.

POLICY GUIDELINES

26. Determinations of intercepted suspected child pornography material are to be made regionally by specialized units of responding police agencies who are considered "legal subject matter experts". Officers should contact their Regional Intelligence Officer (RIO) for assistance in this regard. However, the Prohibited Importations Unit may assist by offering tariff classification guidance in cases of grey area material.
27. CBSA officers should contact their Regional Intelligence Officer (RIO) if they require assistance in dealing with suspect child pornography.
28. Depictions of child pornography include material that visually represents children (or persons being depicted as being under the age of 18) showing a sexual organ or the anal region as the dominant characteristic of the image, for a sexual purpose.

Note: The material must be sexual in nature. The material must be of a nature that no other reasonable purpose could be attributed, other than the

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exploitation of children or persons being depicted as being under the age of 18, for sexual purposes.

29. It is not necessary for individuals to actually be under the age of 18 in order for the material to be classified as child pornography. If an individual is depicted as a juvenile (i.e., visually represented as being under 18 years of age), the material may still fall within the child pornography guidelines. This aspect of child pornography is called “dress-down” and involves visual representation whereby an adult has been made to appear to be a juvenile.
30. The following will generally constitute child pornography:
 - a) depictions of sexual activities involving children or juveniles;
 - b) descriptions that advocate or counsel sexual activities with children, that is which actively induce, promote or encourage the practice of sexual relations with children, or contend that such relations are a healthy part of the sexual and social development of children; or
 - c) written and audio material whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a person under the age of eighteen years that would be an offence under the *Criminal Code*.
31. While it is the policy of the CBSA to interdict and seize all material suspected and determined to be child pornography, prosecutions will not necessarily ensue in all instances.

TARGETING

32. Effective targeting is an essential element in ensuring the identification of suspect child pornography.
33. CBSA officers must use all available tools in targeting child pornography. Targeting is to be based primarily on known importers, exporters, known export locations (specific addresses or geographical areas), the nature of the goods being imported (commodities known to be suspect) and/or information disseminated through regional or headquarters intelligence channels.
34. Officers should also be aware of high-risk geographical locations for child sex tourism.

ROLES & RESPONSIBILITIES

CBSA Officers

35. CBSA officers are responsible for:

- a) selecting and examining shipments that meet the criteria as suspect child pornography or that are the subject of a lookout or that are selected randomly for examination;
- b) referencing, as required, all departmental databases (e.g. the Integrated Customs Enforcement System (ICES)), in order to check the exporter, enforcement history and other relevant information in order to support a determination of child pornography;
- c) contacting the RIO in order to report the finding of suspect child pornography, as well as regional investigators where local standard operating procedures dictate;
- d) completing the Notice of Detention (K26) in instances where the officer is unsure about the classification of material as it relates to child pornography or further examination is required;
- e) completing the Customs Seizure Receipt (K19), Evidence Seizure Receipt (E352) and *Exhibit Control* (K129) forms, when material is determined to be child pornography; and
- f) completing Occurrence Reporting System (ORS) reports, with specific details pertaining to the subject(s) of interest, for all attempted importations of suspected child pornography material.

Regional Intelligence Officers

36. Regional Intelligence Officers are responsible for:

- a) acting as the first point of contact between the officer at the point of entry and domestic and international law enforcement agencies;
- b) assisting officers to acquire legal determinations of suspected child pornography material from subject matter experts within responsible police agencies in the regions;
- c) assessing the validity and level of risk associated with current intelligence pertaining to importation of child pornography;
- d) identifying and targeting high risk traffic to maximize interceptions;

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- e) issuing regional lookouts for medium-risk to high-risk importations and maintaining files which specifically show the link(s) to previous ruling(s) related to child pornography, and/or current intelligence;
- f) maintaining lookouts;
- g) when appropriate, contacting and consulting with Investigations;
- h) follow-up on all interceptions of material featuring child pornography by contacting the appropriate police agency;
- i) working closely with and supporting domestic police and foreign customs agencies and police in targeting suspected offenders
- j) reviewing all ORS reports in regards to suspicious incidents and/or subjects of interest relating to child pornography or child sexual exploitation; and
- k) completing and maintaining IMS files on significant interceptions of child pornography material.

Regional Intelligence Analysts (RIA)

37. Regional Intelligence Analysts are responsible for:

- a) setting importation targets in automated and/or manual systems for medium-risk to high-risk importations and maintaining records showing the link(s) to previous ruling(s) related to child pornography, and/or current intelligence; and
- b) removing importation targets when the risk is no longer deemed to be medium to high.

CBSA Investigators

38. CBSA Investigators are responsible for:

- a) liaising with their Director, RIO's, the Prohibited Importations Unit and law enforcement agencies;
- b) conducting investigations regarding *Customs Act* violations;
- c) laying charges under the *Customs Act* when warranted;

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- d) consulting the Royal Canadian Mounted Police (RCMP) and other enforcement agencies to identify opportunities for joint investigations on a case-by-case basis; and
- e) providing feedback to officers regarding the results of referrals.

Headquarters – Prohibited Importations Unit (PIU)

39. The Prohibited Importations Unit is responsible for:

- a) providing advice and guidance on the distinction between child pornography and obscenity; and
- b) in instances where the classification of suspected material is not immediately clear, providing opinions on the classification of material as child pornography under *Customs Tariff* Item 9899.00.00, once the suspect material has been properly detained on a Form K26.

Headquarters – Enforcement Branch, Field & Partnership Liaison Section (FPLS)

40. The FPLS section is responsible for the national coordination of the CBSA's child pornography program. The national coordinator is responsible for:

- a) providing field support to regional intelligence offices, including provision of information relating to departmental policy, legislative and legal amendments, significant seizures, emerging issues, enforcement initiatives and trends; and
- b) facilitating communication as liaison to foreign and domestic bodies.

PROCEDURES

Accompanied Goods

41. CBSA officers should conduct a routine primary questioning and/or examination. If there is reason for suspicion, the individual and goods should be referred for a progressive examination.

42. CBSA officers may examine laptop computers or other electronic storage devices (e.g. digital cameras, MP3 players) as part of a routine secondary examination. This could include opening the laptop, turning it on and perhaps calling up a few files. Officers may also play any disks (e. g CDs, DVDs, floppies, cassettes, etc.) However, officers must keep in mind that just turning on a laptop could result in evidence being lost, through no fault of the officer. It is critical that evidence be preserved in order to enable prosecution of offenders and identification of victims. These devices should only be examined to the extent necessary to determine if they are admissible or should be detained/seized. More extensive examinations must be conducted by someone qualified in computer forensics do a proper search of the system.
43. When a traveller is found to have one electronic device with (suspected) child pornography, consideration should be given to detaining other electronic devices in their possession.
44. In cases where the examination reveals that the goods are suspected child pornography, or that there is child pornography on the importer's laptop, camera, MP3 player, disk, books, etc., the Regional Intelligence Officer (RIO) should be notified immediately. If the goods are determined to be child pornography, they are subject to seizure with no terms of release. The importer does **not** have the option of abandoning or exporting the goods. Books containing child pornography are considered goods.
45. When a determination of child pornography can be made at the time of importation, the individual may be arrested and the suspect child pornography and child-pornography containing devices (including power cords) may be immediately seized, isolated and secured in such a manner so as to preserve the chain of evidence. Only items that have been viewed, and found to contain or be child pornography should be documented on the K19 Customs Seizure Receipt. It is up to the police to decide what other items they want documented on the E352 Seizure of Evidence Receipt and transferred to their responsibility on the K129 Exhibit Control form. Officers should ensure that full descriptions of the traveler, the prohibited material and the circumstances of the situation are included in their customs notebook. Following the arrest, the police must be contacted.
46. If the police have not seized the devices as evidence because they do not intend to prosecute, and the devices are determined by the CBSA to contain child pornography, terms of release may be offered on the devices if the pornography is removed. An expert, at the importers expense, must do the removal.

47. When the determination of child pornography involves an unreasonable delay, the individual should be permitted to leave, once his/her identity, residence and destination have been established and all other customs procedures have been completed. The suspect goods and devices (viewed and not viewed), should be detained, using a form K26, *Notice of Detention*, pending classification. This should also be the procedure in cases where CBSA officers are uncertain about whether the goods fall under the *Criminal Code* definition (i.e. the age of the subjects in the suspect material are thought to be under eighteen, but the officer cannot be certain). Officers should ensure that full descriptions of the traveler, the prohibited material and the circumstances of the situation are included in their customs notebook. The RIO should be immediately advised of the detention and should assist in ensuring the proper classification of the materials as quickly as possible.

Note: The form K27, *Notice of Detention/Determination*, is **not** to be used to detain suspect child pornography. The K27 is for obscenity and hate propaganda only and the final determination offers the importer the option to export. It is not the agency's policy to allow the export of child pornography.

48. Once the material is determined to be child pornography, the goods, books and devices that contain the material are seized (including power cords, items that were not viewed etc.). The seizure of child pornography is made under the *Customs Act* using an allegation of non-report (section 12) or untrue statements (section 13). The seizure must be documented on a form K19, *Customs Seizure Receipt*. The forms E352, *Evidence Seizure Receipt*, and K129, *Exhibit Control*, must also be completed when the material, books or devices are turned over to a police force to be used as evidence of an offence under the *Criminal Code*. See Part 5, Chapter 3 *Criminal Code* Seizure of Evidence and Goods. The E352 Evidence Seizure Receipt may contain more items than the K19 Customs Seizure Receipt if the police chose to seize more than what the CBSA could determine contained child pornography.
49. There will be instances when goods, such as laptops, digital cameras, or DVDs, etc. are found to contain both suspected child pornography and obscene material. In these instances, CBSA officers should deal with the suspected child pornography first, due to the fact that it is a serious *Criminal Code* offense, by detaining and documenting the goods on a form K26, *Notice of Detention*. If it is later determined that the suspect material is not child pornography, but obscene material is still present on the laptop, digital camera, DVD, etc., then the goods should be re-documented on a Form K27, *Notice of Detention/Determination* and dealt with in accordance with Memorandum D9-1-17 and the Enforcement Manual Part 2, Chapter 8 Obscenity and Hate Propaganda.

Unaccompanied Goods

50. Unaccompanied shipments are those that arrive outside of the presence of the importer, generally via the postal or courier streams.
51. CBSA officers should conduct a routine primary examination. If there is reason for suspicion, the goods should be referred for a progressive examination. In the case of mail, it may only be opened when the officer has reasonable grounds to believe that it contains goods which must be classified under the *Customs Tariff*, which includes prohibited goods.
52. In cases where the examination of goods (e.g. books, magazines, videos, etc.) reveals that suspected child pornography may be present:
 - a) isolate and secure the goods so as to preserve the chain of evidence;
 - b) retain all wrappers, envelopes, etc., relating to the goods;
 - c) note full descriptions and circumstances in the customs notebook;
 - d) detain the goods on form K26, Notice of Detention, pending determination;

Note: The form K27, Notice of Detention/Determination, is **not** to be used to detain suspect child pornography. The K27 is for obscenity and hate propaganda only and the final determination offers the importer the option to export. It is not the agency's policy to allow the export of child pornography.
 - e) notify the RIO as soon as possible;
 - f) request assistance in obtaining the determination, if necessary; and
 - g) do not send the Notice of Detention to the importer prior to contacting the RIO.
53. If the goods are determined to be child pornography:
 - a) seize the goods for non-compliance with the *Customs Act*;
 - b) document the seizure on a form K19, *Customs Seizure Receipt*;
 - c) use the allegation "untrue statement" on seizure documentation if the material forms part of a declared book, magazine etc. but otherwise use the allegation "non-report".

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- d) apply Administrative Monetary Penalty (AMP), in addition to a seizure if the enforcement action is against a commercial entity;
 - e) in the postal stream, issue the seizure and AMP to the exporter but if there is evidence that confirms that the importer knowingly imported the suspected child pornography material, the importer should be named as an associate in the seizure documentation; and
 - f) send a copy of the seizure documentation to the RIO.
54. If the material is turned over to a police force to be used as evidence of an offence under the *Criminal Code*;
- a) complete form E352, Evidence Seizure Receipt; and
 - b) complete form K129, Exhibit Control.
- Note: See Part 5, Chapter 3 *Criminal Code* Seizure of Evidence and Goods.
55. If the prohibited goods are part of a multiple item shipment, no action is to be taken to forward any portion of the shipment and/or to notify the importer of the seizure action until advised to do so by an RIO. _____
56. There will be instances when goods, such as laptops, digital cameras, or DVDs, etc. are found to contain both suspected child pornography and obscene material. In these instances, CBSA officers should deal with the suspected child pornography first, due to the fact that it is a serious *Criminal Code* offense, by detaining and documenting the goods on a form K26, *Notice of Detention*. If it is later determined that the suspect material is not child pornography, but obscene material is still present on the laptop, digital camera, DVD, etc., then the goods should be re-documented on a form K27, *Notice of Detention/Determination* and dealt with in accordance with Memorandum D9-1-17 and the Enforcement Manual Part 2, Chapter 8 Obscenity and Hate Propaganda. .

Prosecutions

57. When child pornography is intercepted, the case will be referred to the appropriate police agency for prosecution pursuant to the *Criminal Code*.

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58. In addition to *Criminal Code* charges by the responsible police agency, *Customs Act* charges for smuggling child pornography may be pursued by Investigations. The appropriate course of action will be jointly determined by the police, Investigations, and the Department of Justice on a case-by-case basis.
59. When a person is found smuggling or attempting to smuggle child pornography into Canada, that person may be arrested as per section 495 of the *Criminal Code*.
60. Where local Standard Operating Procedures (SOP's) advise that Investigations are to be contacted directly, officers are responsible for informing the RIO of the occurrence and completing an occurrence report via the Occurrence Reporting System (ORS).
61. Where there is a potential for intelligence to be gleaned from a child pornography interdiction, the RIO is to be notified at the time of the occurrence.
62. Enforcement of the *Criminal Code* remains the responsibility of the police. Regional Investigations and Intelligence and Contraband offices are to work closely with the police to establish local protocols for dealing with child pornography offences.

LEGISLATIVE AND POLICY REFERENCES

63. *Customs Act*
Customs Tariff Act and its *Schedule* (Section XXI)
Criminal Code
Canadian Charter of Rights and Freedoms
Departmental Memorandum D9-1-17
The Policy on Analysis (Intelligence Process)
The Traveler Processing Manual (Part 9, Chapter 3)

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APPENDIX A**

Child Pornography

ENFORCEMENT MANUAL

Part 2

ENFORCEMENT PRIORITIES

Chapter 14

CHILD PORNOGRAPHY

APPENDIX A

STANDARD OPERATING PROCEDURE

11/21/11

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APPENDIX A

Child Pornography

PURPOSE

The purpose of these *Standard Operating Procedures* are to provide a quick reference, based on the *CBSA Enforcement Manual, Part 2, Chapter 14*, to guide all employees of the CBSA in the identification, detention, and seizure of child pornography.

WHAT IS AND IS NOT CHILD PORNOGRAPHY

What is child pornography?	What is not child pornography?
<p>Visual representations, written material, or audio recordings that depict:</p> <ul style="list-style-type: none"> Children (or persons being depicted as being under the age of 18) showing a sexual organ or anal region for a <u>sexual purpose</u>. Children engaged in explicit sexual activity (an example is a fully clothed child performing oral sex on an adult). 	<p>Visual representations, written material, or audio recordings that depict:</p> <ul style="list-style-type: none"> Children in the bathtub. Nude children on the beach. Children being potty trained. Children wrestling naked. Naked children in a swimming pool.

Age Indicators

Always consider the following age indicators and be sure that they are noted in your notebook, seizure narrative, and “will say” statement:

- Boys – lack of underarm, pubic, circumanal hair, or immature downy pubic hair; lack of genital (testes, scrotum, penis) and muscular development.
- Girls – lack of pubic hair, breast, hip, genital (especially labia) development.
- Dentition – loss of front teeth occurs at about 5 to 6 years of age and the subsequent eruption of the front adult teeth appearing quite larger than surrounding baby teeth; consistent with a child under the age of 12 years.

STANDARD OPERATING PROCEDURES

All actions taken during the examination and seizure process should be completed with the objective of a successful enforcement action and prosecution against the individual(s).

Electronic evidence is easily altered and file artefacts (created, modified, and accessed dates) necessary to establish knowledge and control of the material will be overwritten by booting up the computer and viewing files. Take notes of all actions performed while searching electronic evidence.

Accompanied Goods

Passwords should be requested and noted prior to the examination of electronic devices.

Child Pornography determined

When child pornography has been positively identified and is in the possession of the individual:

- a. Secure and isolate the goods to preserve the chain of evidence.
- b. Arrest and read rights and cautions to the individual in possession of child pornography.
- c. Advise that the prohibited goods are under seizure.
- d. Advise the superintendent.
- e. Contact RIO and/or Criminal Investigations depending on local operating procedures. Contact local police, if necessary.
- f. Use latex gloves and anti-static bags to preserve evidence.
- g. Remove batteries from devices prior to securing in separate evidence bags to ensure devices cannot connect to wireless network; some devices may lose data when the battery is disconnected; consult Criminal Investigations if uncertain.
- h. If anti-static bags are not available, use paper envelopes for items sensitive to static electricity – e.g. hard drives.
- i. Seal anti-static bag or paper envelope in an evidence bag.
- j. Use separate evidence bags for laptops, cameras, cell phones, etc; ensure that all power cords, batteries etc., for the devices are included.
- k. Take detailed notes (for a list of indicators refer to page 7):
 - Circumstances of situation
 - Full description of individual
 - Time of discovery
 - Type of commodity
 - Nature of sexual act

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- Detection tool used
- Record file name and path of image
- Comments made implicating ownership, origin of the material, etc.
- l. Check available databases (ICES, PIRS, CPIC, FOSS, NCIC) for individual's history.
- m. Turn individual over to responding officer, whether Investigator or police (be sure to have considered the individual's admissibility under IRPA).
- n. Forms to be completed:
 - K19 Seizure Receipt
 - BSF667 Search and Arrest
 - K153 Significant Seizure Report
 - E352 Evidence Seizure Receipt
 - K129 Exhibit Control
 - K127 Notice to Crown Counsel (not necessary if goods are turned over directly to a CBSA Investigator).
- o. Write a "will say" statement prior to the arrival of the responding officer, whenever possible, but no later than shift end.
- p. Complete Occurrence Reporting System (ORS) reports.

Child Pornography pending determination

When the determination of child pornography requires clarification to ensure the depiction(s) meet the definition of child pornography (s. 163.1, Criminal Code of Canada, see Appendix B):

- a. Secure and isolate the goods to preserve the chain of evidence.
- b. Detain the individual, read rights and cautions, and interview accordingly.
- c. Advise the superintendent.
- d. Contact RIO and/or Criminal Investigations depending on local operating procedures. If possible, consult with local police.
- e. Continue examination in search of an identifiable depiction of child pornography. Be sure to use latex gloves to preserve evidence.
- f. Examine all accompanying laptops, cameras, cell phones, etc; ensure that all power cords, batteries etc., for the devices are included.
- g. Take detailed notes (for a list of indicators refer to page 7):
 - Circumstances of situation
 - Full description of individual
 - Time of discovery
 - Type of commodity

- Nature of sexual act
- Detection tool used
- Record file name and path of image
- Comments made implicating ownership, origin of the material, etc.
- h. Check available databases (ICES, PIRS, CPIC, FOSS, NCIC) for individual's history.
- i. Obtain as much information as possible about where the individual lives and, if a visitor, where they will be while in Canada; make copies of all identification documents.
- j. If depictions cannot be clearly determined as child pornography, and indicators do not warrant further forensic examination, release the individual and their goods.
- k. If indicators warrant a forensic examination, (for example, encryption present, filenames indicative of child pornography but not able to open), in consultation with Criminal Investigations, detain the device(s) using form K26, forward the device to Criminal Investigations using form K129, and release the individual.
- l. Complete an ORS report.

Unaccompanied Goods

Child Pornography determined

When child pornography has been positively identified and the individual is not present:

- a. Secure and isolate the goods to preserve the chain of evidence.
- b. Use latex gloves and anti-static bags to preserve evidence.
- c. Remove batteries from devices prior to securing in separate evidence bags to ensure devices cannot connect to wireless network; some devices may lose data when the battery is disconnected; consult Criminal Investigations if uncertain.
- d. If anti-static bags are not available, use paper envelopes for items sensitive to static electricity – e.g. hard drives.
- e. Seal anti-static bag or paper envelope in an evidence bag.
- f. Advise the superintendent as soon as practicable.
- g. Contact RIO and/or Criminal Investigations depending on local operating procedures. Contact local police, if necessary.
- h. Use separate evidence bags for laptops, cameras, cell phones, etc; ensure that all power cords, etc., for the devices are included.
- i. Take detailed notes (for a list of indicators refer to page 7):
 - Circumstances of situation
 - Time of discovery
 - Type of commodity

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Child Pornography

- Nature of sexual act
- Detection tool used
- Record file name and path of image
- Record any passwords
- j. Check available databases (ICES, PIRS, CPIC, FOSS, NCIC) for individual's history.
- k. Complete the appropriate forms:
 - K19 Seizure Receipt
 - K153 Significant Seizure Report
 - E352 Evidence Seizure Receipt
 - K129 Exhibit Control
 - K127 Notice to Crown Counsel (not necessary if goods are turned over directly to a CBSA Investigator)
- l. Complete Occurrence Reporting System (ORS) reports.

Child Pornography pending determination

When the determination of child pornography requires clarification to ensure the depiction(s) meet the definition of child pornography (s. 163.1, *Criminal Code of Canada*, see Appendix B):

- a. Secure and isolate the goods to preserve the chain of evidence.
- b. Continue examination in search of an identifiable image of child pornography. Be sure to use latex gloves to preserve evidence.
- c. Advise the superintendent.
- d. Contact RIO and/or Criminal Investigations depending on local operating procedures. If possible, consult with local police.
- e. Examine all accompanying laptops, cameras, cell phones, etc; ensure that all power cords, etc., for the devices are included.
- f. Take detailed notes (for a list of indicators refer to page 7):
 - Circumstances of situation
 - Full description of individual
 - Time of discovery
 - Type of commodity
 - Nature of sexual act
 - Detection tool used
 - Record file name and path of image
 - Record any passwords

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- g. Check available databases (ICES, PIRS, CPIC, FOSS, NCIC) for individual's history.
- h. If depictions cannot be clearly determined as child pornography, and indicators do not warrant further forensic examination, release the goods.
- i. If indicators warrant a forensic examination, (for example, encryption present, filenames indicative of child pornography but not able to open), in consultation with Criminal Investigations, detain the device(s) using form K26, and forward the device to Criminal Investigations using form K129.
- j. Complete an ORS report.

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Child Pornography

INDICATORS

Accompanied Goods:

Unaccompanied Goods:

DEFINITION OF CHILD PORNOGRAPHY
Section 163.1(1) of the *Criminal Code of Canada*.

A photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means;

- that shows a person who is or is depicted as being under the age of 18 years and is engaged in or is depicted as engaged in explicit sexual activity, or
- the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of 18 years; or
- any written material or visual representation that advocates or counsels sexual activity with a person under the age of 18 years that would be an offence under this *Act*; or
- any written material whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a person under the age of eighteen years that would be an offence under this *Act*; or
- any audio recording that has as its dominant characteristic the description, presentation or representation, for a sexual purpose, of sexual activity with a person under the age of eighteen years that would be an offence under this *Act*.

Office of Primary Interest:
Enforcement and Corporate Programs Section
Borders Enforcement Division
Enforcement Programs Directorate
Enforcement Branch
Canada Border Services Agency
epe@cbsa-asfc.gc.ca

CBSA ENFORCEMENT MANUAL

Part 2

ENFORCEMENT PRIORITIES

Chapter 15

TRAFFICKING IN PERSONS

2016-04-19

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2016-04-19

POLICY STATEMENT

1. The Canada Border Services Agency's (CBSA) policy objective, with regards to Trafficking in Persons (TIP), is consistent with its overall mandate to provide integrated border services that support national security and public safety priorities and facilitate the free flow of persons and goods, including food, plants and animals, which meet all the requirements under its program legislation. In this regard, the CBSA is responsible for:
 - a) detecting instances of TIP;
 - b) preventing, identifying and interdicting suspected human traffickers involved in the cross-border movement and exploitation of victims of TIP (VTIP);
 - c) contributing to the safety and security of potential victims by separating them from the control of suspected human traffickers and referring them to appropriate government services; and,
 - d) supporting the investigation and prosecution of human trafficking offenders.

BACKGROUND

2. TIP, often described as a modern-day form of slavery, involves the recruitment, transportation, harbouring and/or exercising control, direction or influence over the movement of a person in order to exploit that person, typically through sexual exploitation or forced labour. Traffickers control their victims in various ways, such as taking away their identity documents and passports, sexual abuse, threats, intimidation, physical violence, and isolation. Organized criminal networks as well as individuals perpetrate this crime, operating within countries and across borders. Traffickers reap large profits while robbing victims of their freedom, dignity, and human potential at great cost to the individual and society at large. TIP represents a consistent and pervasive assault on the fundamental human rights of its victims.
3. While TIP does not require the crossing of international borders and often involves extensive organized crime networks, the CBSA will become involved when the victim of TIP is a foreign national or permanent resident, or if the person is being transported across the border. TIP, and related conduct, is criminalized through three specific offences in the *Criminal Code* (see sections 279.01-279.03), as well as an offence under the *Immigration and Refugee Protection Act* (IRPA) (see sections A118, A120 and A121).
4. For additional background information on TIP and Forced Labour, refer to Appendix A and Appendix B.

AUTHORITIES

5. The CBSA is responsible for investigating all offences committed under the IRPA with the exception of cases linked to national security, TIP, and major organized crime which fall under the responsibility of the Royal Canadian Mounted Police (RCMP).
6. Although it is recognized that the RCMP has the primary responsibility for IRPA investigations involving TIP, there may be circumstances where the level of criminality and investigative activities required would be consistent with the CBSA's capacity to investigate these cases. Investigation of such cases by the CBSA will only be undertaken following consultation with the RCMP as to the nature, scope and objectives of the investigation.

Immigration and Refugee Protection Act (IRPA):

Offence — trafficking in persons

7. **Subsection 118 (1)** - No person shall knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception or use or threat of force or coercion.

(2) For the purpose of subsection (1), *organize*, with respect to persons, includes their recruitment or transportation and, after their entry into Canada, the receipt or harbouring of those persons.

Penalties

8. **Section 120** - A person who contravenes section 118 or 119 is guilty of an offence and liable on conviction by way of indictment to a fine of not more than \$1,000,000 or to life imprisonment, or to both.

Aggravating factors

9. **Subsection 121 (1)** - The court, in determining the penalty to be imposed under section 120, shall take into account whether
 - a) bodily harm or death occurred, or the life or safety of any person was endangered, as a result of the commission of the offence;
 - b) the commission of the offence was for the benefit of, at the direction of or in association with a criminal organization;
 - c) the commission of the offence was for profit, whether or not any profit was realized; and,
 - d) a person was subjected to humiliating or degrading treatment, including with respect to work or health conditions or sexual exploitation as a result of the commission of the offence.

Criminal Code of Canada:

Specific TIP Criminal Code Provisions

Trafficking in persons

10. Subsection 279.01 (1) - Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person, or exercises control, direction or influence over the movements of a person, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable

- a) to imprisonment for life and to a minimum punishment of imprisonment for a term of five years if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or
- b) to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of four years in any other case.

(2) No consent to the activity that forms the subject-matter of a charge under subsection (1) is valid.

Trafficking of a person under the age of eighteen years

11. Subsection 279.011 (1) - Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person under the age of eighteen years, or exercises control, direction or influence over the movements of a person under the age of eighteen years, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable

- (a) to imprisonment for life and to a minimum punishment of imprisonment for a term of six years if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or
- (b) to imprisonment for a term of not more than fourteen years and to a minimum punishment of imprisonment for a term of five years, in any other case.

(2) No consent to the activity that forms the subject-matter of a charge under subsection (1) is valid.

Material benefit — trafficking

12. Subsection 279.02 (1) - Everyone who receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of an

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offence under subsection 279.01 (1), is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.

(2) Everyone who receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly from the commission of an offence under subsection 279.011(1), is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of two years.

Withholding or destroying documents — trafficking

13. **Subsection 279.03 (1)** - Everyone who, for the purpose of committing or facilitating an offence under subsection 279.01 (1), conceals, removes, withholds or destroys any travel document that belongs to another person or any document that establishes or purports to establish another person's identity or immigration status — whether or not the document is of Canadian origin or is authentic — is guilty of an indictable offence and liable to imprisonment for a term of not more than five years.

(2) Everyone who, for the purpose of committing or facilitating an offence under subsection 279.011 (1), conceals, removes, withholds or destroys any travel document that belongs to another person or any document that establishes or purports to establish another person's identity or immigration status — whether or not the document is of Canadian origin or is authentic — is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years and to a minimum punishment of imprisonment for a term of one year.

Exploitation

14. **Subsection 279.04 (1)** - For the purposes of sections 279.01 to 279.03, a person exploits another person if they cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service.

(2) In determining whether an accused exploits another person under subsection (1), the Court may consider, among other factors, whether the accused:

- (a) used or threatened to use force or another form of coercion;
- (b) used deception; or
- (c) abused a position of trust, power or authority.

(3) For the purposes of sections 279.01 to 279.03, a person exploits another person if they cause them, by means of deception or the use or threat of force or of any other form of coercion, to have an organ or tissue removed.

Other Key Criminal Code offences relevant to TIP include but are not limited to:

- s.57 Forgery of or uttering forged passport;
- s.210 (1) Keeping common bawdy-house;

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- ss.211 Transporting person to a bawdy-house;
- ss.220 & 221 Causing bodily harm or death by criminal negligence;
- ss.222, 224, 226 & 229-236 Homicide;
- s.264.1 Uttering threats;
- ss.265-268 Assault;
- ss.271-273 Sexual assault;
- ss.279 (1) & (1.1) Kidnapping;
- s.279 (2) Forcible confinement;
- ss.280 & 281 Child abduction (non-parental);
- ss.322 & 334 Theft;
- s.343-344 Robbery;
- s.346 (1) Extortion;
- s.347 Criminal interest rate;
- ss.366-368 Forgery and uttering forged documents;
- s.380 Fraud;
- s.422 Criminal breach of contract;
- ss.423 & 423.1 Intimidation;
- ss.462.3 & 462.31-462.49 Proceeds of crime;
- s.465 Conspiracy;
- s.467.11 Participation in criminal organization activities;
- s.467.12 Commission of offence for criminal organization; and,
- S.467.13 Instructing commission of offence for criminal organization.

PURPOSE AND SCOPE

15. The purpose of this document is to provide guidelines to CBSA Officers in order to detect and intercept perpetrators and potential victims of TIP.
16. This policy applies to all CBSA Officers, at Ports of Entry (POE) or Inland, dealing with persons in all modes of transportation.

POLICY GUIDELINES

General

17. All CBSA Officers, with TIP-related functions, including Border Services Officers (BSOs) and Liaison Officers overseas, are responsible for reading and becoming familiar with this Chapter, including the indicators found in Appendix C which contains information that may assist in the identification and interception of a suspected human trafficker, and/or a potential VTIP.
18. The CBSA Officer should adopt a victim-centered approach when dealing with potential VTIPs, taking into consideration their special needs and vulnerabilities.

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19. The CBSA Officer will immediately notify their Superintendent or Manager of a suspected TIP case, who in turn will provide direction and support to the officer.
20. The Superintendent or Manager will determine the next steps concerning the potential VTIP, including referrals to the respective officials, based on their regional Standard Operating Procedures (SOP).
21. If there are sufficient grounds for a TIP investigation, the Superintendent or Manager will be responsible for referring the matter to the CBSA's Criminal Investigations Division (CID) and/or the Intelligence Officer (IO) for further investigation.
22. If warranted, CID will notify the lead police agency of the suspected TIP case.
23. Potential foreign national VTIP cases will be referred to the Ministry of Immigration, Refugees and Citizenship Canada (IRCC) for an interview on immigration options, including consideration of a Temporary Resident Permit (TRP).

ROLES AND RESPONSIBILITIES

Liaison Officer

24. Liaison Officer (LO) is responsible for:

- a) working in key locations overseas with international partners, local immigration and law enforcement agencies, and airlines to combat irregular migration, including human smuggling and TIP;
- b) supporting document integrity and anti-fraud activities by detecting and seizing fraudulent documents or fraudulently obtained travel documents;
- c) receiving, analysing, and disseminating intelligence and lookouts in a timely manner on suspected and known TIP cases;
- d) assisting in the gathering and analysis of information to identify regional or global patterns related to anti-fraud and TIP;
- e) researching, monitoring, and reporting of suspected cases and incidents with respect to TIP;
- f) liaising as soon as possible with various foreign and domestic government and non-government officials including Anti-fraud Officers from the IRCC, other LOs, POEs, the Intelligence Tactical Operations Centre (ITOC) at National Headquarters, police agencies, non-governmental organizations, and other partners responsible for TIP upon interception of information indicating potential TIP activity involving Canada as a transit or destination country; and,

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- g) providing TIP training or awareness sessions for decision makers (Visa Officers) and airline staff.

Intelligence Officer

25. Intelligence Officer (IO) is responsible for:

- a) reviewing any information provided by the CBSA Officer, the CID or Inland Enforcement Officer (IEO) to determine if the individual may be involved in a TIP situation;
- b) providing guidance on the collection of intelligence that is required to determine whether a case may be a TIP incident;
- c) communicating case details with the LO responsible for the area of the world from which the VTIP was transported;
- d) contacting the Regional CBSA Criminal Investigations office in order to establish if there are possible links to existing IRPA investigations including human smuggling;
- e) making POE staff aware of current intelligence trends and relevant lookouts as they pertain to TIP;
- f) receiving, analysing and disseminating intelligence and lookouts in a timely manner on suspected and known TIP cases;
- g) developing and managing case files, maintaining a record of regional TIP activities and entering in a timely manner all the information into IMS;
- h) liaising with various partners involved in TIP issues; and,
- i) providing assistance through a 24-hour duty phone number.

Note: For a list of regional and NHQ Intelligence TIP contacts, refer to Appendix D.

Border Services Officer (POE)

26. BSO is responsible for:

- a) obtaining information to determine if the individual may be involved in a TIP situation;
- b) referring potential VTIPs and suspected traffickers to secondary examination at the POE;
- c) separating potential victims from traffickers;

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- d) seizing and holding any means of transportation, document, or other items believed to be fraudulently or improperly obtained or used (as per s. 140 (1) of the IRPA);
- e) notifying the Superintendent or Manager as soon as possible when encountering a suspected TIP case;
- f) taking detailed notes on all encounters involving suspected TIP cases;
- g) as per regional SOPs, and when directed by the Superintendent or Manager, referring the potential TIP case to CID and/or the IO for further investigation; and,
- h) when directed by the Superintendent or Manager, referring potential foreign national VTIP cases to IRCC for an interview on immigration options.

Inland Enforcement Officer

27. IEO is responsible for:

- a) collecting and assessing information to determine if the individual may be involved in a TIP situation;
- b) notifying the Manager as soon as possible when encountering a suspected TIP case;
- c) taking detailed notes on all encounters involving suspected TIP cases; and,
- d) when directed by the Manager, notifying the regional IO, CID, the IRCC and the police agency of jurisdiction.

Superintendent or Manager

28. Superintendent or Manager is responsible for:

- a) ensuring compliance with the TIP policy and procedures;
- b) ensuring the timely circulation of all intelligence reports, lookouts, alerts, and targets;
- c) providing the necessary direction and support to CBSA Officers; and,
- d) as per regional SOPs, determining next steps concerning potential VTIPs, including referrals to respective officials.

Criminal Investigator

29. Criminal Investigator is responsible for:

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- a) upon referral of TIP case information, assessing the information, determining who is best positioned to investigate and gathering all pertinent information and evidence;
- b) providing guidance on how to proceed with a suspected human trafficker and/or potential VTIP and on the collection of evidence that is required to determine whether the case may be a TIP incident;
- c) determining if there are possible links to existing IRPA investigations including human smuggling;
- d) communicating case details with NHQ and the LO responsible for the area of the world from which the VTIP was transported;
- e) briefing Regional Intelligence on findings to assisting Intelligence in trend analysis, lookouts and Intelligence products; and,
- f) liaising with the lead police agency responsible for the TIP investigation.

Headquarters Intelligence Operations and Analysis Division (IOAD)

30. IOAD Current Intelligence and Analysis Section is responsible for:

- a) assisting in the gathering and analysis of information to identify regional or global trends related to Human Trafficking;
- b) compiling basic and statistical data regarding possible and confirmed border related TIP cases across Canada;
- c) producing intelligence assessments that categorize threat posed by the movement of people and goods overseas, at ports of entry and inland in support of operations, planning, policy and program decision makers; and,
- d) providing a focus on global trends in irregular migration and their impact on Canada.

31. IOAD Intelligence Operations Section is responsible for liaising with IRCC and other agencies when any TIP cases are brought to their attention.

Headquarters Intelligence Programs Unit

32. The Intelligence Programs Unit is responsible for:

- a) coordinating all enforcement policies related to TIP; and
- b) coordinating all enforcement training related to TIP.

PROCEDURES

Identifying a potential VTIP

33. All CBSA Officers will familiarize themselves with the indicators found in Appendix C that will assist in determining whether the individual who is encountered at the POE or Inland is a VTIP.
34. TIP is often confused with human smuggling; it is important to be able to differentiate between the two, as they require different responses from authorities. If unsure as to whether the situation is a case of human smuggling rather than TIP, the officer should consult with the Superintendent or Manager.

Identifying a potential child VTIP (under 18)

35. The CBSA Officer must be fully alert to minors who need protection and should pay extra attention to children as they enter Canada.
36. Careful examination is specifically required of children or youth travelling without proper identification or parental guidance.
37. A child may manifest fears differently than an adult, and typically have special needs that require attention.
38. The CBSA Officer should be aware that in addition to being trafficked the child may have also been abducted and/or smuggled.
39. The CBSA Officer must be familiar with the following indicators:
- a) indicators that TIP may have occurred;
 - b) abduction indicators; and
 - c) missing children indicators.
40. The CBSA Officer should refer to the TIP indicators found in Appendix C, and the abduction and missing children indicators found in IRCC's ENF 21 Recovering Missing, Abducted and Exploited Children.
41. All persons under the age of 18 who are potential VTIPs are, by definition, missing or abducted children and should be treated as such.
42. The CBSA Officer may contact the 24/7 Office for Missing Children at 1-877-318-3576 to request information or assistance on any missing child related issue.

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43. The Border Operations Directorate, Traveller Operations Division, in conjunction with the IOAD and the National Targeting Centre (NTC) manages the CBSA *Our Missing Children* operational responsibilities.
44. No person under the age of 18 can consent to prostitution or other exploitative activity (see 279.011 (2) of the Criminal Code).
45. Any person under the age of 18 who is transported for an exploitive purpose is being trafficked (see 279.011 (1) of the Criminal Code).
46. The CBSA Officer will refer to IRCC's ENF 21 Recovering Missing, Abducted and Exploited Children for information on primary and secondary examination procedures intended to assist officers to identify and recover missing, abducted and exploited children.
47. Additional information can also be found in CBSA's Enforcement Manual, Part 2 Chapter 12. Our Missing Children.

Individual is not yet a VTIP

48. If the CBSA Officer has reason to believe that the foreign national is not a VTIP, however is at risk of becoming a VTIP based on a variety of indicators, the officer should complete an ORS and contact the IO, who in turn will investigate the case further.
49. The CBSA Officer should send an email to NHQ at _____ with the GCMS file number of the subject, and a brief note indicating "file has been flagged and referred to IO re: possible VTIP case".
50. If there are no immediate concerns about safety and the person is admissible to Canada, the CBSA Officer may follow standard procedures.

Interviewing a potential VTIP

Note: Persons who have been trafficked are victims of a crime and should be treated as such despite their possible violation(s) of IRPA or other legislation.

51. The CBSA Officer should ensure the potential VTIP's physical comfort to the greatest extent and allow for frequent breaks if necessary.
52. VTIPs should, whenever possible, be given the option of choosing the gender of the interviewing officer and interpreter.
53. The Superintendent or Manager will assist the officer in determining whether sufficient evidence exists to refer the case for further investigation.
54. For interviewing guidelines and interview tips see Appendix E-F.

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Interviewing a potential child VTIP

- 55. A potential child VTIP should be treated with the utmost discretion and sensitivity.
- 56. The interviewing guidelines for a child can be found Section 13 of IRCC's Recovering Missing, Abducted and Exploited Children manual.
- 57. Additional information can also be found in CBSA's Enforcement Manual, Part 2 Chapter 12, Our Missing Children.

Document evidence of TIP

- 58. The CBSA officer must secure any physical evidence including travel documents, airline tickets, and fraudulent passports, in the VTIP's possession.
- 59. For additional information on search, seizure, fingerprinting, and photographing, refer to the IRCC Enforcement Manual 12.

Potential VTIPs safety

- 60. The CBSA Officer must exercise reasonable care for the victim's protection and well-being, as well as of potential victims.
- 61. Special attention must be given to victims who may be in danger of reprisals from the traffickers or their accomplices in Canada, and/or may have experienced significant trauma.
- 62. The CBSA Officer is expected to take precautions that will help ensure that potential VTIPs are protected from harm to themselves or others.
- 63. The CBSA Officer must ensure the potential VTIP is separated from the control and custody of any possible trafficker.

Services for VTIPs

- 64. Provinces and territories administer numerous programs and services that may be available to VTIPs including: health care, emergency housing, social services including emergency financial assistance and legal aid assistance under which eligibility is based primarily upon financial need.
- 65. All provinces and territories have child protection laws and agencies responsible for assisting children in need focused on the principle of the best interest of the child.
- 66. Foreign nationals who are VTIPs may avail themselves of a number of legislative and administrative measures in order to remain in Canada either temporarily or permanently. These include stays of removal, TRPs, refugee protection claims, applications for humanitarian and compassionate considerations and pre-removal risk assessments.

- 67. All potential foreign national VTIPs must be referred to IRCC to examine their options.
- 68. Should a TRP be issued, essential medical care will be provided through the Interim Federal Health (IFH) Program.

Contact IRCC

- 69. All encountered victims or potential VTIPs who are foreign nationals, should be immediately referred to IRCC for an interview on immigration options including consideration of a TRP.
- 70. If the CBSA is planning a law enforcement operation where potential VTIPs may be encountered, the IRCC should be informed in advance so that they can be prepared to evaluate and assist victims.
- 71. IRCC-NHQ should be advised of the referral by email at

TRP Issuance for VTIP

- 72. An initial short-term, fee-exempt TRP can be issued by IRCC to provide VTIPs with a reflection period to consider their options (such as remaining in Canada; returning home; choosing to assist in the investigation or criminal proceedings against the traffickers); to allow them to recover from physical or mental trauma; to allow them to escape the influence of the traffickers; and to facilitate any other purpose the IRCC officer believes to be relevant.
- 73. Where circumstances warrant, subsequent long-term TRPs may also be issued for up to three years after an IRCC officer conducts a more complete verification of the facts in consultation with law enforcement.
- 74. Once a TRP has been issued by IRCC, the victim is granted legal temporary resident status in Canada.
- 75. Recipients of such a permit may have access to accommodations through provincial/territorial social services or non-government organizations (NGOs).
- 76. The TRP may be cancelled by IRCC at any time should the circumstances warrant.
- 77. Once the TRP period has ended and the foreign national has not been granted further status to remain in Canada, the file will be returned to CBSA for review of IRPA options.
- 78. For additional information on TRPs for VTIPs, refer to IRCC's Inland Processing (IP) 1 Temporary Resident Permits Section 16.

Note: For IRCC regional contact information, see Appendix G.

Inadmissibility report (A44) and Removal Orders

79. A potential VTIP may come to the CBSA's attention as a foreign national in Canada with or without status.
80. A CBSA officer who is of the opinion that a permanent resident or a foreign national who is in Canada is inadmissible may prepare an A44 report setting out the relevant facts, which will be transmitted to the Minister's delegate.
81. If the A44 report contains one or more inadmissibility allegations, and if the Minister's delegate has jurisdiction for all inadmissibility allegations contained within that report, the Minister's delegate can determine the disposition of that report.
82. If, however, there are several inadmissibility allegations in a report and the Minister's delegate has jurisdiction for only some of them, then the Minister's delegate is not authorized to determine a disposition for that report, and all allegations must be referred to the Immigration Division for an admissibility hearing.
83. If the Minister's delegate receives two separate inadmissibility reports on the same person, then the Minister's delegate is authorized to make a determination and, if appropriate, issue a removal order on the report that contains only allegations for which the Minister's delegate has jurisdiction.
84. Refer to IRCC's ENF 5 Writing 44(1) Reports for further guidance.

VTIP who violates IRPA after a TRP has been issued

85. When a CBSA Officer encounters a foreign national who has been issued a TRP as a VTIP and is subsequently found to be inadmissible under a different section of IRPA, the CBSA Officer will determine whether another inadmissibility report should be written.
86. The IRCC has the exclusive designated authority to cancel a TRP but will take into consideration the recommendation made by CBSA.
87. The IRCC will then decide whether the VTIP will be authorized to remain in Canada on the strength of a new TRP to address new inadmissibility grounds or whether the TRP should be cancelled allowing enforcement proceedings to commence.
88. Factors taken into consideration include the overall safety and security of Canadians, recidivism, rehabilitation, humanitarian and compassionate factors, and overall risk to the VTIP if removed from Canada.
89. Each case will be assessed on a case-by-case basis.

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Removal order proceedings

90. When the determination has been to not issue a TRP, or when the period of validity of a TRP expires without TRP renewal or when IRCC cancels a TRP, IRCC will inform the CBSA.
91. The file will then be returned to the originating Inland Enforcement office for removal proceedings.
92. All eligible foreign nationals subject to a removal order that is in force may apply for a pre-removal risk assessment (PRRA), which assesses the risks the individual may face if returned to his or her country of nationality or permanent residence.
93. A positive assessment of risk usually permits the individual to apply for permanent resident status and remain in Canada.

Arrest and Detention of a potential VTIP

94. As a potential VTIP may be without documents or lacking other resources (money, a safe place of residence, friends or contacts other than the human trafficker), releasing the individual may place them back in the custody of their human trafficker.
95. When a potential VTIP without legal status is identified at POE or Inland, and the local IRCC office is unavailable for an interview, the CBSA should ensure the custody of this individual by releasing the individual on conditions into the care of a NGO, in an immigration holding centre or into the care of a family member.

Note: CBSA should immediately contact local Child Protection Services when a potential child VTIP is encountered. Section 60 of IRPA states that a child shall be detained only as a measure of last resort, taking into account the other applicable grounds and criteria including the best interests of the child.

96. It should be underlined that a VTIP may have experienced serious physical or emotional trauma and any decision regarding detention should take into consideration the following:
 - a) any measures taken should be done as to avoid the re-victimization of the VTIP;
 - b) availability of alternative arrangements such as the residence of the individual's family members, local shelters, police safe houses, and child care agencies or child protection services for the care and protection of minor children;
 - c) the anticipated length of detention;
 - d) the risk of continued control by the human smugglers or traffickers who brought the potential VTIP to Canada;

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- e) the type of detention facility envisaged and its conditions;
 - f) the availability of accommodation that allows for the segregation of any minor children from adult detainees; and
 - g) the availability of appropriate services in the facility, including counselling.
97. Detention should not be considered except as a last resort to separate the VTIP from the control of the suspected human trafficker while protection needs can be considered and thereby ensure the VTIP is able to attend a hearing.
98. Officers may arrest and detain a permanent resident and/or a foreign national upon entry into Canada and within Canadian territory under the authority A55(1) of IRPA with a warrant, and A55(2) of IRPA without a warrant.
99. Officers may consider arrest/detention when dealing with a VTIP who is inadmissible on serious grounds and where grounds for detention exist (see A55(3) of the IRPA).

Repatriation of VTIPs

100. In some instances, the VTIP may wish to return to their country of citizenship or legal permanent residence.
101. A VTIP with legal status in Canada can voluntarily depart Canada, as the individual is not under any removal order.
102. If there will be a delay in the return of a VTIP without legal status in Canada to their country, the individual should be referred for an interview with IRCC to determine if a TRP is warranted. This may often occur when a travel document is required.

Repatriation of child VTIPs (under 18)

103. Children who are foreign nationals in need of protection are handled through existing Canadian programs for vulnerable children.
104. The Government of Canada works with provincial/territorial children's aid societies and with the appropriate authorities from the child's country of citizenship to ensure the best interests of the child.
105. Special precautions are taken to ensure that returning children is in their best interests and that prior to return, a suitable care-giver such as a parent, other relative, other adult care-taker, a government agency or a child-care agency in the country of origin has agreed and is able to take responsibility for the child and provide him or her with appropriate care and protection.

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106. An appointed member of the social services of the foreign country and/or the child's parents or legal guardian must receive the child in the country of origin.

Identifying a suspected human trafficker

107. The CBSA Officer will become familiar with the indicators that TIP may have occurred (see Appendix C).

Interviewing a suspected human trafficker at a POE or Inland

108. The CBSA Officer will conduct database checks to obtain information on the individual's status.

109. The CBSA Officer will question the suspected human trafficker to establish preliminary information such as the individual's name, citizenship, etc.

110. All questions put forth to an individual to determine if they are a suspected human trafficker will directly relate to their admissibility to Canada (see A16 of the IRPA).

111. If a suspected human trafficker has satisfied an officer of their status as a Canadian citizen or permanent resident, officers must provide *Charter* and Caution warnings before asking any questions that may further a criminal investigation.

112. For additional information on additional and direct questioning, see EN Manual, Part 3, Chapter 3, Additional and Direct Questioning, Paragraphs 19 - 36

113. The CBSA officer will seize and hold any means of transportation, document or other item if the officer believes, on reasonable grounds, that it was fraudulently or improperly obtained or used or that the seizure is necessary to prevent its fraudulent or improper use or to carry out the purposes of the IRPA (see A140).

114. For additional guidance on interviewing techniques in a case involving a suspected human trafficker, the officer will contact the IO.

Arrest and detention of a suspected human trafficker

115. A CBSA Officer will follow standard arrest and detention procedures in the case of a suspected human trafficker.

116. For arrest and detention policy and procedures, refer to the CBSA's Enforcement Manual, Part 6, Chapter 1.

117. CBSA Officers should refer to IRCC's Enforcement Manual 7 for additional information related to investigations and arrests.

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118. CBSA Officers should refer to IRCC's Enforcement Manual 20 for further guidance on detention.

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Appendix A

BACKGROUND ON TRAFFICKING IN PERSONS

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APPENDIX A - BACKGROUND ON TRAFFICKING IN PERSONS

1. Trafficking in Persons (TIP) is a crime which involves the recruitment, transportation or harbouring of persons for the purpose of exploitation (typically in the sex industry or forced labour). The types of trafficking include international TIP and domestic TIP. TIP may occur across or within borders, may involve extensive organized crime networks and violates the basic human rights of its victims. However, the core of TIP is exploitation of the individual and transportation within or across borders need not occur. TIP is criminalized through four specific offences in the *Criminal Code* (see sections 279.01-279.03, as well as an offence under the *Immigration and Refugee Protection Act* (IRPA) (see sections A118, A120 and 121).
2. Circumstances that make a person vulnerable to being trafficked include poverty, gender-based inequality, lack of education and opportunity, lack of information, inadequate social programs, war and conflict situations and political unrest.

In some

cases, VTIPs may know what type of work they will perform but are deceived about the working conditions, or the degree of personal liberty they will possess. Runaways are also a vulnerable group, which may be targeted by human traffickers. Human traffickers may also obtain victims through kidnapping or abduction. In some cases, individuals willingly engaging in human smuggling may find themselves trafficked at destination through loss of liberty and/or threats to the VTIP and/or family members and friends.

3.

4. TIP causes grave direct and indirect harm to victims, their communities and society as a whole. Human traffickers exert control over VTIPs through confinement, psychological abuse, physical or sexual abuse, threats against individuals and/or their families or loved ones. Furthermore, fear of police or immigration authorities is exploited by the traffickers, who take VTIP's passports/identification and deprive them of the basic necessities of life. VTIPs fear for their own personal safety, and the safety of loved ones (back home) which can cause additional emotional trauma and stress. VTIPs may also experience shame, low self-esteem and a sense of powerlessness. VTIPs can suffer from post-traumatic stress disorder as a result of mistreatment. TIP provides a highly profitable business in which criminals enjoy low risk of detection and punishment which allows them to operate with

ease around the world. These criminals use the proceeds of TIP to expand their other illegal activities and entrench themselves in communities.

5. The Canada Border Services Agency (CBSA) is engaged in fighting TIP by detecting and preventing trafficking operations and associated activities and the transport of victims to Canada. The CBSA provides assistance to international governments and transportation industry partners, with the common goal of deterring trafficking organizations from using Canada as a destination, source or transit country. Furthermore, the CBSA provides assistance in the investigation and prosecution of trafficking offenders, and works in close proximity with key partner agencies in Canada, such as IRCC, the RCMP, local police agencies and non-government organizations, in ensuring that VTIPs are provided with the necessary referrals and assistance.
6. VTIPs may be smuggled into Canada in a clandestine manner, or may enter legitimately as visitors or through various immigration streams, and may or may not overstay their status. Alternatively, human traffickers may use deception or false documents to fraudulently obtain visas or assist VTIPs to be admitted at a Port of Entry (POE). VTIPs may or may not be aware that they have entered Canada illegally. They may cooperate in different ways with the trafficker in the mistaken belief they will have a better life in Canada. They will likely attempt to pass through the POE by misrepresenting themselves as genuine temporary residents.
7. Usually, the potential VTIP does not realize that he or she has been trafficked until arrival at the final destination, where they are confined and exploited. In some cases, human traffickers subsequently exploit persons who enter Canada as legitimate visitors. The VTIP can be forced to provide their labour or services in a variety of settings including through domestic work, factory or farm work or in the sex industry.
8. The CBSA Officer/LO may encounter individuals they suspect are VTIPs while assessing irregular migrants at embarkation points abroad, at the POE or in the course of ongoing investigations into human smuggling or raids on criminal enterprises, which involve irregular migrants. Trafficking is often confused with human smuggling; however, it is important to be able to distinguish between the two, as they require different responses from authorities. Identifying VTIPs who are in transit can be difficult; exploitation may not yet have occurred, and potential victims would be unaware of the human traffickers' true intent. At this stage, potential VTIPs may view human traffickers as assisting them.
9. While some POE CBSA Officers have the designated authority to issue a TRP, a CBSA Officer is not authorized to issue the special coded TRP to potential VTIPs. The CBSA Officer should be aware of the indicators that a person may have been trafficked; and when, in the judgment of the officer, an adequate number of indicators are present; the individual should be referred to IRCC for a detailed examination. The case should be carefully documented and all information passed on to the Intelligence Officer (IO) who, in turn, will coordinate with the lead police agency and with IRCC.

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10. The RCMP has established a Human Trafficking National Coordination Centre (HTNCC) within the Immigration and Passport Branch at Headquarters in Ottawa. The Centre facilitates cooperation and coordination among law enforcement agencies for investigations linked to combating human trafficking in Canada and abroad. Through this, the CBSA has experienced increased collaboration and partnership with the RCMP and law enforcement agencies across Canada, not only in the area of prosecution, but also in terms of developing prevention and protection initiatives.
11. The CBSA strives to: obtain intelligence on the methods and routes used for the trafficking of foreign nationals into Canada; develop indicators and practices that contribute to the prevention and interdiction of the transport of VTIPs into Canada for exploitation; penetrate and disrupt trafficking rings; and, support the prosecution of human traffickers. For the CBSA to succeed at these objectives it is essential that VTIPs are identified and encouraged to come forward.

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Appendix B

FORCED LABOUR

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APPENDIX B – FORCED LABOUR

Forced labour is any work or service that a person is obliged to do against his or her will, without or with very meagre payment or under threat.

There are certain categories of workers that are more vulnerable to coercion than others. Some are at risk because of their ethnic background, relative poverty or irregular immigration status.

It is important to make the distinction between poor working conditions versus a forced labour situation. Provinces and territories have primary responsibility for regulating working conditions in Canada and should be notified in any instance of suspected forced labour of foreign nationals, as should Employment and Social Development Canada (ESDC).

Human traffickers may subsequently exploit persons who enter Canada legally as legitimate visitors, students, or workers.

According to the International Labour Organization (ILO), some of the most common forms of forced labour include:

Debt-induced forced labour: Commonly referred to as “bonded labour” in south Asia, where the practice is most common, but also widely known as “debt bondage”. This involves a worker taking a loan or wage advance from an employer or labour recruiter, in return for which the worker pledges to repay the loan through his or her labour and sometimes that of family members. The terms of the loan or work, however, may be such that the worker is trapped for years without being able to pay back the loan.

Forced labour in prisons: Labour exacted from prison workers is not generally considered forced labour under international law. Involuntary work performed by prisoners who have not been convicted in a court of law and whose work is not supervised by a public authority is, however, considered forced labour. Similarly, involuntary work performed by a prisoner for the benefit of a private undertaking is also considered forced labour.

Forced labour outcomes of human trafficking: Trafficking in persons has become a truly global enterprise. It is often linked to organized crime, but may also be perpetrated by individuals or small groups. The labour of victims is typically obtained through threats, deceptive recruitment, racketeering and blackmailing in order to obtain all of migrant workers' earnings, or an excessive proportion.

The following presents a non-exhaustive list of economic sectors in which cases of forced labour and human trafficking have been identified as a significant problem in many countries:

- Agriculture and horticulture;
- Construction;
- Garments and textiles under sweatshop conditions;
- Hospitality and catering;

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- Mining and logging;
- Food processing and packaging;
- Fishing
- Transportation;
- Domestic service, caregiving, and other care and cleaning work; and
- Sex industry and prostitution.

Identifying forced labour in practice

Lack of consent to work (the "route into" forced labour)	Menace of a penalty (the means of keeping someone in forced labour)
<ul style="list-style-type: none"> • Birth/descent into "slave" or bonded status • Physical abduction or kidnapping • Sale of person into the ownership of another • Physical confinement in the work location – in prison or in private detention • Psychological compulsion, i.e. an order to work, backed up by a credible threat of a penalty for non-compliance, or manipulation of relationship (e.g. trafficker pretending to love the victim) • Induced indebtedness (by falsification of accounts, inflated prices, reduced value of goods or services produced, excessive interest charges, etc.) • Deception or false promises about types and terms of work • Withholding and non-payment of wages • Retention of identity documents or other valuable personal possessions 	<ul style="list-style-type: none"> • Threat of, or actual physical violence against worker, family or loved ones or close associates • Sexual violence • (Threat of) supernatural retaliation • Imprisonment or other physical confinement • Financial penalties • Reporting to authorities (police, immigration, etc.) and deportation • Exclusion from future employment • Exclusion from community and social life • Removal of rights or privileges • Deprivation of food, shelter or other necessities • Shift to even worse working conditions • Loss of social status

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For additional information on forced labour please refer to the Commission for Labor Cooperation and ILO websites.

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Appendix C

**INDICATORS THAT TRAFFICKING IN PERSONS MAY HAVE
OCCURRED**

**APPENDIX C - INDICATORS THAT TRAFFICKING IN PERSONS (TIP)
MAY HAVE OCCURRED**

Important considerations:

The following indicators are found in both the United Nations Toolkit on TIP as well as in case material such as reports from confirmed international TIP cases. They outline variables that Enforcement Officers see repeatedly in actual or suspected TIP cases and variables that are being used as potential indicators.

It is important to note that not all of these indicators are present in every identified TIP case, as each TIP case presents a unique and/or sometimes similar but not identical combination of indicators from which a pattern is then discerned. It is the pattern, not the presence of indicators alone, which is used to identify a potential victim of trafficking in persons (VTIP).

In addition, as there may be other factors that are not listed here which could be indicative of a potential exploitative/TIP situation, the CBSA Officer should keep an open mind when reviewing and considering a potential TIP case.

Potential indicators:

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Appendix D

CANADA BORDER SERVICES AGENCY (CBSA) CONTACT INFORMATION

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APPENDIX D – CBSA CONTACT INFORMATION

To request assistance of the CBSA frontline intelligence community regarding trafficking in persons (TIP), contact the regional Intelligence officer.

CBSA – 24 Hour Contact for Intelligence Officers:	
British Columbia	
Alberta North/ Regina/Saskatchewan	
Manitoba	
Toronto/GTA	
Niagara/Ft. Erie	
Windsor/St.Clair/London	
Ottawa/Northern Ontario	
Cornwall	
Lansdowne	
Québec	
Atlantic	
CBSA National Headquarters can be reached at:	
Intelligence Tactical Operations Centre	

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Appendix E

**VICTIM OF TRAFFICKING IN PERSONS INTERVIEWING
GUIDELINES**

APPENDIX E – VICTIM OF TRAFFICKING IN PERSONS INTERVIEWING GUIDELINES

A victim of trafficking in persons (VTIP) may have been physically and/or sexually assaulted, confined, restrained and/or subjected to psychological abuse. Fear for their own personal safety and the safety of loved ones can cause additional emotional trauma and stress. The VTIP may also experience shame, low self-esteem and a sense of powerlessness. The VTIP may suffer from post-traumatic stress disorder and may not be able to recount certain details of their experience in a systematic and consistent manner. In some cases, the victim may also believe that their trafficker loves them and consequently may seek to protect the trafficker.

The Canada Border Services Agency (CBSA) Officer should be aware that individuals react to violence and trauma in various ways, and not all VTIPs exhibit identical or even similar symptoms.

- The VTIP may be easily intimidated and have difficulty communicating.
- The VTIP may be generally terrorized beyond the ability to react normally.
- The VTIP may fear or mistrust authorities. Also realize that in some source countries, police may not be willing or able to help the victim, and may even assist traffickers, therefore VTIPs often assume that the same conditions exist here in regards to assistance from police.
- Some VTIPs may not perceive themselves as victims but rather that they do what they have to do support themselves or their family and/or to pay off their debt to a trafficker, or because they believe the trafficker loves them.
- The VTIPs may have limited ability in English or French, therefore requiring an interpreter.
- Some VTIPs may have participated in fraudulent or criminal acts, as coerced by traffickers and therefore may be fearful of repercussions of such actions.

The CBSA Officer should be conscious of cultural and gender issues that may affect communication, including both verbal and non-verbal signals. VTIPs who are victims of sexual violence should, whenever possible, be given the option of choosing the gender of the interviewing officer and interpreter.

Once commencing the interview, it is important to proceed with extreme tact and sensitivity.

- The CBSA Officer should ensure the potential VTIPs physical comfort to the greatest extent possible and allow for frequent breaks if necessary.
- The CBSA Officer should reassure the potential VTIP that they will receive help and sympathetic treatment.

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- The CBSA Officer may not be able to establish trust or rapport; the period of reflection afforded by the TRP issued by IRCC is intended, in part, to allow the individual to recover trust and the ability to cooperate, should the individual choose to do so.

At the first encounter, avoid causing any further harm and avoid any course of action or line of questioning that might traumatize the individual further. Engage in as little questioning as possible, and conduct your interaction with the individual in a non-confrontational manner. Use non-threatening body language. Listen to the VTIP's story and realize that the truth may take some time to surface as these victims and their families are threatened with violence in the event that they cooperate with the police. Should the officer encounter resistance, questioning should be put on hold.

For further assistance on interview questions and techniques please refer to Appendix F below.

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Appendix F

INTERVIEWING QUESTIONS AND TIPS

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APPENDIX F – INTERVIEWING QUESTIONS AND TIPS

The International Organization for Migration has developed these questions to be explored, or addressed, during the interview. They may not need to be directly posed to the potential VTIP, but the officer may instead receive answers by gently guiding the VTIPs as they recount their stories. If VTIPs become uncomfortable talking about specific areas of their experiences, attempts can be made to guide them to provide information in other relevant areas. This may also facilitate their ability to subsequently return to those areas where they experienced discomfort.

Typical questions might include, but are not limited to, the following:

For additional information on interview pointers and questions please refer to the International Organization of Migration (IOM) Handbook on Direct Assistance for Victims of Trafficking

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Appendix G

IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA (IRCC) CONTACT INFORMATION

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APPENDIX G – IRCC CONTACT INFORMATION

Any information relating to cases that involve international human trafficking elements (cases that involve foreign nationals in Canada with no legal immigration status, temporary immigration status or pending refugee claims) must be sent to IRCC Headquarters

NATIONAL HEADQUARTERS			
Location	Name	Position	Phone Number
Operational Management and Coordination (Ottawa, ON)	Melanie Fontaine	Assistant Director-Temporary Program Delivery Division	613-437-8861
Operational Management and Coordination (Ottawa, ON)	Tracey Gillies	Senior Program Advisor	613-437-9403
Operational Management and Coordination (Ottawa, ON)	Caroline Henry	Program Advisor	613-437-8249

The regional contacts below are to be used by law enforcement for referral of international trafficking cases. Individuals occupying these positions are subject to change, but contacts will be updated as soon as possible if a change occurs, however, IRCC can always be reached via the email address above.

To reach any of the contacts by email, the naming standard is firstname.lastname@cic.gc.ca.

Eastern Region (Quebec and Atlantic Region)			
Location	Name	Position	Phone Number
Regional Office (Montreal, QC)	Marylène Charbonneau	Ops Support Director	438-892-0779
Regional Office (Montreal, QC)	Annie Lafleur	Regional Program Advisor	514-283-7702
ONTARIO			
Regional Headquarters (Toronto, ON)	Audrey Mitchell	Ops Support Director	647-789-6675
Regional Headquarters (Toronto, ON)	Lily Fernandez	Senior Analyst and Liaison Officer	647-789-7562
Regional Headquarters (Toronto, ON)	Geny Petraki	Manager IRCC Etobicoke	289-998-9350

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	Rose Hanley	Immigration Officer	647-252-1013
Western Region			
Regional Headquarters (Calgary, AB)	Miguel Godreau	Ops Support Director	587-233-0974

Part 3 Chapter 1

Targeting

CUSTOMS ENFORCEMENT MANUAL

Part 3

SELECTION

Chapter 1

TARGETING POLICY AND PROCEDURES

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POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to conduct targeting activities 24/7 as part of the Agency's risk-based approach to border management to identify and intercept suspected high-risk people, goods and conveyances that may pose a threat to the security, safety and prosperity of Canada.
2. The expected outcomes of this policy are:
 - To support a single-tier centralized targeting business model;
 - To ensure nationally consistent targeting processes and procedures; and
 - To increase the effectiveness in the identification of suspected high-risk people, goods and conveyances in a timely manner.

Strategic Direction

Targeting Mission

3. To identify high-risk security, prosperity, and safety threats prior to their arrival in Canada.

Targeting Vision

4. To be a globally networked driving force in advanced threat identification ensuring Canada's security, prosperity and safety.

National Targeting Program Objective

5. The objective of the National Targeting Program is to develop and maintain the CBSA's ability to identify suspected high-risk people, goods and conveyances in order to alert the appropriate CBSA personnel of an impending suspected risk or threat to national security and/or public safety priorities¹, supported by intelligence. An intelligence supported targeting program allows targets to be intercepted to undergo further verification and examination from an informed position, with respect to the level of threat, through enhanced risk assessment methodologies, targeting systems and the use of actionable intelligence products.

DEFINITIONS

6. For an explanation of the acronyms and terminology used within this document, please refer to "Glossary" – Part 11 of the CBSA Enforcement Manual.

¹ Public safety priorities include, but are not exclusive to, contraband, illicit migration and other government department (OGD) requirements.

AUTHORITIES

7. There are a number of laws, regulations and guidelines that govern and provide the CBSA authorities to conduct targeting activities. Complete acts and regulations can be found on the Department of Justice website at www.justice.gc.ca. The following are a few key examples, but is not an exhaustive list.
8. The Canada Border Services Act establishes the CBSA to administer and enforce other Acts of Parliament defined as program legislation, including the *Customs Act*.
9. The Charter of Rights and Freedoms (the "Charter") protects an individual's right to privacy, which may include the collection, use and disclosure of information. (See in particular section 8)
10. The Customs Act (CA) establishes the requirements for presenting and reporting to the CBSA. This includes reporting of goods and conveyances imported to, and in some cases, exported from Canada, as well as the requirements for the presentation of persons entering Canada. In some circumstances, the Customs Act requires the submission of advance information for a conveyance, person or good to the CBSA prior to their arrival in Canada. The Customs Act also contains specific and strict provisions regarding the use and the disclosure of "customs information." (See in particular sections 11. (1), 12. (1) to (3), 12.1, 95. (1) to (4), 107.1)
11. The Immigration and Refugee Protection Act (IRPA) governs admissibility to Canada. It, among other provisions, establishes criteria and conditions for those seeking entry as a temporary resident, permanent resident or refugee claimant in need of protection. IRPA also contains a regulation-making authority with respect to information sharing. (See in particular section 150.1 (1,2))
12. The Immigration and Refugee Protection Regulations (IRPR) contain regulations that are relevant to this policy, in particular those which state that commercial transporters must provide advance passenger information for each person carried. These regulations apply to the air, marine and rail modes of transportation. (See in particular sections 269 (1) and (2))
13. The Passenger Information (Customs) Regulations require commercial carriers, charterers, travel agents, and owners and operators of a reservation system to provide the CBSA with or to provide the CBSA with access to, specific information related to persons entering Canada. The regulations clearly outline what is required to be reported to the CBSA and indicates the format in which that information is to be provided. (See in particular sections 2, 3, 4)
14. The Protection of Passenger Information Regulations (PPIR) governs the use, retention, access and disclosure of API/PNR information. (See in particular sections 2, 3, 4, 5, 6, 7, 8)

15. The Privacy Act (PA) governs the Government of Canada's collection, storage, use and disclosure of personal information. It also grants individuals with a right of access to their own personal information. (See in particular sections 4, 5, 6, 7, 8)
16. The Access to Information Act details the requirement for the Government of Canada to disclose information (including, but not limited to, personal information) in its possession. The Act outlines what and when information must be disclosed, but also establishes exceptions from disclosure in specific circumstances. (See in particular sections 12. (1), 13. (1) and (2))
17. Relevant provisions of the Reporting of Imported Goods Regulations detail the requirements for industry to provide the CBSA with advance notice of the time and place of arrival of a conveyance and goods in Canada and sets out the advance commercial information data elements for air and marine modes. These regulations are currently being updated for ACI requirements in the highway and rail modes.
18. The Reporting of Exported Goods Regulations provides the requirements for industry to report to the CBSA when certain goods are being exported along with the time and place the goods will be exported from Canada.

PURPOSE AND SCOPE

19. The purpose of this policy is to provide nationally consistent guidelines on the targeting principles for all CBSA personnel who are integral to targeting functions and activities for all modes and streams.
20. The CBSA National Targeting Policy and national mode-specific procedures² are to be followed when targeting for all people, goods and conveyances to identify suspected risks for national security and/or public safety priorities.
21. This policy must be used in conjunction with the following policies and procedures:
 - a. ACROSS Quick Reference Guide
 - b. Administrative Guidelines for the Provision to Others, Allowing Access to Others and Use of Advance Passenger Information (API) and Passenger Name Record (PNR) Data
 - c. Advance Passenger Information/Passenger Name Record (API/PNR) and Passenger Information System (PAXIS) Policy and Procedures

² The national mode-specific procedures are high-level targeting processes to be followed for each mode; the NTC Targeting Operations is responsible for developing and maintaining the Standard Operational Procedures for the NTC.

- d. Canadian Police Information Centre (CPIC) Policy
 - e. CBSA Code of Conduct
 - f. CBSA Lookout Policy
 - g. CBSA Security Policies
 - h. Global Case Management System (GCMS)
 - i. Guidelines for the Classification and Handling of Information Assets
 - j. Information Sharing Policy:
Policy on the Disclosure of Personal Information: Section 8 of the *Privacy Act*
Policy on the Disclosure of Customs Information: Section 107 of the *Customs Act*
 - k. International arrangements to share API/PNR data
 - l. Memorandum of Understanding for the provision of taxpayer information from the rapid information for district offices (RAPID) system to the National Targeting Centre (NTC) (formerly National Risk Assessment Centre (NRAC)) between the Canada Revenue Agency (CRA) and the Canada Border Services Agency (CBSA)
 - m. Policy Guidelines on the Disclosure of Customs Information: Section 107 of the *Customs Act*
 - n. Standard Operating Procedures for the NTC (NBOC Programs and Operations Governance Instruments)
 - o. TITAN Reference Guides
 - p. Values and Ethics Code for the Public Service
22. For the targeting of obscenity and hate propaganda please refer to the Enforcement Manual, Part 3, Chapter 2: Targeting Obscenity and Hate Propaganda.

BACKGROUND

23. On April 1, 2010, as part of the Change Agenda, the CBSA established a functional authority, as a component of the CBSA's Functional Management Model, to provide program direction for all targeting activities. In order to enhance the National Targeting Program, a phased implementation of a centralized Targeting Business

Model is now in effect, and includes a targeting process that is supported by intelligence information, products, and the Intelligence Community.

24. Under the CBSA's risk management framework, national security, contraband, illicit migration and Other Government Department (OGD) targeting are fundamental components of the Agency's compliance and enforcement efforts.
25. Risk management involves measuring inherent risk in terms of probability, magnitude and the significance of loss or injury. Targeting uses risk management concepts by applying a systematic methodology to identify, evaluate and control potential adverse events and consequences.
26. Effective targeting means that targeting activities focus on the identification of suspected high-risk people, goods and conveyances. This is accomplished by correlating, evaluating, and assessing the level of risk from various information sources and making recommendations.
27. The full targeting cycle is explained in Appendix A – Targeting Cycle.

POLICY GUIDELINES

General

28. All CBSA employees involved in targeting activities and functions must understand and adhere to this policy; including, but not limited to, indeterminate, term, casual, part-time, contract and private agency personnel, and individuals seconded or on assignment (including students).
29. The CBSA will conduct established targeting activities 24/7 to identify suspected high-risk people, goods and conveyances and to then alert the appropriate CBSA personnel of an impending suspected risk to national security and/or public safety priorities.
30. All targeting activities will be conducted only for the purpose of identifying suspected high-risk people, goods and conveyances, and in accordance with the applicable legislation, regulations, procedures and policy that govern the National Targeting Program.
31. Targeting activities will be conducted in accordance with this policy, national mode-specific procedures (where applicable) and the Standard Operational Procedures (SOPs) of the National Targeting Centre (NTC).
32. Under the various roles and responsibilities, the appropriate parties and entities will ensure adherence to legal requirements in regard to the use and disclosure of information.

Targeting Training Requirements

33. Training and development shall commence with the initial appointment, which includes assignments, secondments and permanent appointments, of new targeting officers and will be ongoing to ensure continued improvement of targeting skills and knowledge as per the National Training Standards for Targeting Officers.
34. It is mandatory that the targeting supervisor complete the Foundations of Targeting and mode-specific training in the area being supervised.

Technology, Systems and Targeting Information

35. Only CBSA authorized computers, applicable systems and other Agency approved technology will be used for targeting functions and activities.
36. Authorized CBSA personnel will be issued the appropriate profile to access CBSA and other enforcement systems, analytical tools, and other research sources used for functions related to targeting.
37. CBSA personnel conducting targeting program support activities will have the appropriate level of access to targeting systems. Such activities include: examinations of targeted people, goods, or conveyances; trend analysis; intelligence case file development; investigation reporting, and/or performance measurement activities.
38. CBSA employees involved in activities and functions related to targeting shall not retain, provide access to, or disclose information obtained and/or used during the targeting process other than in accordance with the applicable legal requirements, Memoranda of Understanding (MOU), Mutual Lateral Agreement Treaties (MLAT) or other sanctioned by the CBSA agreements, and CBSA policy.

Target Issuance

39. CBSA personnel with the appropriate system profile will have the ability to issue a target within applicable risk assessment and enforcement systems.
40. Targeting officers will use technology, intelligence products and any other relevant information in the deductive reasoning process to confirm or negate the identified risk in order to make the decision to issue a target.
41. When issuing a target, targeting officers will provide sufficient information to ensure the appropriate CBSA personnel responsible for the interception and examination of the people, goods or conveyances, will be able to effectively confirm or negate the identified risk. This information includes providing details such as risk indicators, identification elements, as well as known dangerous persons or goods (if applicable).

42. In the case of a target being issued for a person, shipment or conveyance entering Canada at non-automated ports, the appropriate CBSA port of entry personnel must be notified. Please refer to the guidelines in the [national mode-specific procedures](#) and the [NTC SOPs](#).
43. Targets will be issued in both official languages or, if mutually agreed upon by regional management and the NTC Targeting Operations, in the language of preference for the port of entry.
44. Once a target has been issued, the responsibility is transferred to the appropriate CBSA personnel for the interception, examination, reporting and analysis of exam results. Please refer to the [Roles and Responsibilities](#) section within this policy for more information.

Security, Classification and Protection of Information

45. Targeting activities will be conducted in accordance with all relevant CBSA Security Policies.
46. The CBSA and all of its employees have a duty to protect personal and sensitive information. There are strict guidelines and protocols to follow when sharing, storing and disposing of protected, confidential, secret and top secret information. Refer to the [Guidelines for the Classification and Handling of Information Assets](#).
47. All CBSA personnel involved in the [Targeting Cycle](#) (see Appendix A) will ensure strict adherence to the *Access to Information Act*, *Privacy Act*, *Personal Information Protection and Electronic Documents Act*, section 107 of the *Customs Act*, the *Protection of Passenger Information Regulations*, and the Charter in regard to security, information use/disclosure and the protection of information.
48. All targeting personnel must have a minimum of 'Secret' security clearance prior to conducting functions and activities related to targeting.
49. Targeting methodologies, including training materials, are classified as Protected B information.
50. Proper security and safeguarding precautions must be taken to control the movement of visitors within any CBSA targeting operational and sensitive areas. Sensitive information, including protected and classified materials, located on or near workstations should be hidden from plain sight (i.e. monitors turned off and/or papers turned over) when visitors are present within targeting operational areas. The CBSA will work to ensure compliance with the [CBSA's Security Program Management Framework](#) when handling such materials.
51. The discussion between targeting officers of developing files is encouraged, but employees must be aware of people in and around the operational work place who

are not entitled to the information. Therefore, sensitive information relating to targets and/or targeting activities should be discussed in a private and secure area.

52. Third Party Information is data the CBSA obtains from another organization, or solely on behalf of another organization, and continues to belong to an organization other than the CBSA. The following must be adhered to:

- Do not share or disclose any sensitive third party information without the express written consent of the originating party.
- Information obtained from systems such as Random Access Personal Information Database (RAPID), Treasury Enforcement Communication System (TECS), and CPIC is third party information.
- RAPID information is not to be printed or stored, as per the terms outlined in the CBSA-CRA RAPID MOU.

53. Targeting officers, targeting supervisors, and targeting intelligence officers may share CBSA-generated information with external partners and other law enforcement agencies only in adherence to the following:

- The targeting officer and targeting supervisor must understand exactly why the other agency wants the CBSA information and depending on the reason, sharing or disclosure of the information may be prohibited by law.
- Authority for information disclosure/sharing must be confirmed before the information is disclosed/shared. It may be based in the *Customs Act* or other program legislation. Examples of situations in which authority in the *Customs Act* may exist for disclosure/sharing of customs information include:
 - Where information sharing agreements are in place with foreign governments;
 - When the sharing of customs information is reasonably necessary to protect the life, health or safety of an individual(s) or the Canadian environment; and
 - Statistical data can be shared as long as there is nothing contained in the data that would identify any person, business or entity.

54. Refer to D-Memo 1-16-3 Administrative Guidelines for the Provision to Others, Allowing Access to Others and Use of Advance Passenger Information (API) and Passenger Name Record (PNR) Data for additional information in regard to the disclosure and sharing of API/PNR information.

55. If targeting officers and targeting supervisors are unsure about what security precautions or procedures should be taken at any time please contact the IT Security generic mailbox at
 or the Security and Professional Standards Directorate generic mailbox at

Information Sharing and Communication

56. Any exchange of information (even within the CBSA) that takes place must ensure that any relevant legislative and regulatory obligations are observed including the Charter, the *Customs Act*, the *Protection of Passenger Information and Regulations*, and the *Privacy Act*; the provisions of current agreements between the CBSA and its partners for information sharing; and joint border initiatives.
57. Under certain circumstances, during the targeting process, the targeting officer may need to contact the CBSA's internal and/or external partners:
- If the targeting officer discovers that there is an existing intelligence file or lookout on a person, shipment, or conveyance under review, the file owner and the NTC Targeting Intelligence must be contacted.
 - Targeting officers must adhere to the communication processes provided in the national mode-specific procedures associated to this policy and the SOPs of the NTC.
 - For identified risks to public safety priorities the appropriate OGD shall be contacted, when required.
58. Targeting officers and targeting supervisors will follow communication protocols when contacting external and internal partners, including other CBSA personnel within the Agency's Regions and ports of entry.
59. If CBSA officials have any questions or concerns regarding disclosures of customs information, please visit the [Information Sharing and Collaborative Arrangements Policy \(ISCAP\) Unit](#) page and its related toolkits on Atlas for more information, or contact them directly at:

ROLES AND RESPONSIBILITIES

Targeting – Operations Branch

National Targeting Centre

60. The role of the National Targeting Centre is to conduct targeting activities 24/7 to ensure the health, safety and national security of Canadians by increasing Canada's ability to detect and interdict high-risk people, goods and conveyances from entering the country at the earliest point in the travel and trade continuum with a view to facilitate legitimate travel and trade

61. The National Targeting Centre (NTC) is responsible for:

- a. Identifying suspected high risk people, goods and conveyances and referring this information to CBSA personnel and partnering agencies to ensure a coordinated enforcement response is executed.
- b. Collecting, compiling and reporting statistical data for use in performance measurement;
- c. Using data analytics, applicable intelligence products and threat analysis in the development of scenarios based targeting rules for traveller and automated risk indicators for commercial streams; and
- d. Facilitating the flow of information and intelligence within the CBSA and between partnering agencies to risk assess all people and goods before they arrive at the border.

Targeting Officer

62. The role of the targeting officer is to identify suspected high-risk people, goods and conveyances through the targeting process and generate targets that result in referrals to the appropriate CBSA personnel and/or internal and external partners of a suspected impending risk to the security or public safety of Canada.

63. The targeting officer is responsible for:

- a. Identifying, reviewing, evaluating and addressing any suspected high-risk people, goods or conveyances based on indicators, intelligence products, OGD targeting requests, other relevant information, and results of automated risk assessment technology;
- b. Determining the level of risk within set criteria while adapting to changing priorities;
- c. Exchanging information with partners in accordance with all relevant CBSA MOU as required during the targeting process;
- d. Generating and disseminating target information in a clear, efficient and timely manner to alert appropriate CBSA personnel and internal/external partners where appropriate, of a suspected risk to national security and/or public safety priorities;
- e. Abiding by the various legislation, regulations, policies and procedures of the CBSA and its National Targeting Program;
- f. Actively participating in briefings and meetings related to emerging trends, enforcement actions, examination reports and intelligence products related to targeting;
- g. Participating in case-specific CBSA and/or joint external operations, after-action reviews and working groups aimed at identifying, addressing and resolving risks and issues and/or enhancing targeting delivery and effectiveness;
- h. Providing targeting advice, responses and information to CBSA personnel and/or internal and external partners on targeting operations, systems and procedures,

- including any legislative and regulatory restrictions, to resolve issues, to support collaborative and operational efforts;
- i. Providing all relevant targeting information to and encourage open communication with the NTC Targeting Intelligence and/or regional intelligence;
- j. Providing required testimony supporting targeting decisions in a Court of Law or administrative tribunal;
- k. In accordance with set criteria and existing protocols, sharing CBSA information with foreign targeting administrations with regard to people, goods and conveyances on a case/project specific basis;
- l. Providing feedback through a supervisor to the appropriate area on the effectiveness of the scenarios, risk rules and/or indicators, as well as suggesting system enhancements that may lead to improved procedural efficiencies;
- m. Notifying the appropriate area when data quality issues are identified;
- n. Completing and reporting any required targeting statistics in a timely manner;
- o. Completing all mandatory targeting training in accordance to the National Training Standards for Targeting Officers, as well as any supplemental training to enhance targeting skills and knowledge;
- p. Timely and fulsome completion of administrative duties, as required; and
- q. Safeguarding protected/classified data.

Targeting Supervisor

- 64. The role of the targeting supervisor is to supervise the delivery of a 24/7 targeting program by providing guidance, direction and support to targeting officers in the identification of suspected high-risk people, goods and conveyances.
- 65. The targeting supervisor is responsible for:
 - a. Ensuring compliance with the applicable legislation, regulations, policies and procedures of the CBSA and its National Targeting Program;
 - b. Balancing workload with available resources;
 - c. Regularly reviewing, monitoring and evaluating issued target narratives to ensure that sufficient and relevant information is included and that examining BSOs are clear on the direction required on the secondary examination, which assists in the analysis for "closing the loop" purposes;
 - d. Maintaining and safeguarding protected/classified data;
 - e. Overseeing the sharing of information with internal and external partners relating to targeting operations and issues while ensuring strict adherence to applicable legislation and regulations;
 - f. Providing all relevant targeting information to and encourage open communication with the NTC Targeting Intelligence;
 - g. Maintaining open and continuous lines of communication, and consulting with regional personnel, partners, stakeholders and others where appropriate;

- h. Providing advice, interpretation, direction and expertise to staff, including identifying enhancements and making recommendations on the administration and application of the policy and procedures, as necessary;
- i. Making decisions on the appropriate action to take in the coordination of responses to emergency threats and situations, as well as in the management of operational incidents and issues;
- j. Monitoring, researching, coordinating, and conducting reporting activities related to the administration of targeting operations in a timely manner;
- k. Producing regular reports and briefings to senior management on operational and program management matters;
- l. Providing feedback to the appropriate area on the effectiveness of the applicable system- related scenarios, risk rules and/or indicators through appropriate channels;
- m. Notifying the appropriate area when data quality issues are identified ;
- n. Ensuring targeting officers have access to all essential systems used for risk assessment, as well as identifying system enhancements that will improve the efficiency and effectiveness of the delivery of targeting operations;
- o. Monitoring the use of targeting systems to ensure compliance with legislative requirements pertaining to the use, retention, and disposal of advance information;
- p. Ensuring targeting officers receive the nationally approved targeting training and that any prerequisites have been met prior to the commencement of the training in accordance with the National Training Standards for Targeting Officers;
- q. Ensuring a 100% review of all high-risk travellers, goods and conveyances that are identified on a targeting work list is completed;
- r. Performing mandatory consultations when risk to national security is suspected;
- s. Overseeing the follow-up of any outstanding targets (i.e. cancelled, not intercepted, etc.) and the subsequent examination reports; and
- t. Participating in any required training.

Targeting Manager

66. The role of the targeting manager is to ensure the necessary resources are in place to support an effective National Targeting Program that identifies suspected high-risk people, goods and conveyances.

67. The targeting manager is responsible for:

- a. Managing the day-to-day operation of the National Targeting Program activities in accordance with national targeting priorities;
- b. Ensuring personnel, including but not exclusive to targeting officers, targeting supervisors, and targeting support staff receive the necessary training to effectively and efficiently perform their duties;
- c. Ensuring the requirements of the Performance Measurement Framework are met;

- d. Ensuring all targeting personnel, including targeting officers, targeting supervisors and targeting support staff are aware of their accountability for their roles and responsibilities;
- e. Providing all relevant targeting information to and encourage open communication with the NTC Targeting Intelligence;
- f. Liaising with CBSA headquarters, POE and regional operations, internal and external partners, stakeholders and others when necessary;
- g. Providing feedback by identifying enhancements and making recommendations on the administration and application of the policies and procedures through appropriate channels as necessary;
- h. Providing feedback to the appropriate area on the effectiveness of the applicable system- related scenarios, risk rules and/or indicators through appropriate channels;
- i. Identifying system enhancements that will improve the efficiency and effectiveness of the delivery of targeting operations;
- j. Participating in workshops, teleconferences, and meetings on targeting related issues;
- k. Taking the appropriate corrective action for any breach in policy or procedures;
- l. Ensuring the CBSA National Targeting Policy and mode-specific procedures are implemented; and
- m. Ensuring that any statistical reporting requirements are completed in a timely manner.

Targeting Intelligence

68. The role of the NTC Targeting Intelligence unit is to provide intelligence-led support to: targeting operations, regional intelligence, and intelligence program areas.

69. Key responsibilities of Targeting Intelligence include:

- a. Supporting national targeting operations by providing actionable products developed from regional, national and international intelligence information;
- b. Analyzing intelligence-generated targeting, and resultant examinations, to identify unknown threat and risk trends, patterns and indicators;
- c. Perform analysis in order to identify new information which was previously unknown;
- d. Synthesizing actionable intelligence-based indicators, profiles and scenarios extracted from intelligence desks for use in the targeting process across the CBSA;
- e. Sharing tactical intelligence and information while collaborating with targeting operations of partner countries;
- f. Conducting joint targeting intelligence support activities via on-site embedded intelligence liaison officers of partner agencies;
- g. Contribute to the development and refinement of risk rules for commercial targeting;

- h. Developing, in conjunction with internal and external partners, scenario-based targeting (SBT) rules and commercial risk indicators to identify high-risk persons and goods of national security, illicit migration and contraband concerns; and
- i. Timely analysis of Interpol Notices and Diffusions to determine potential threats to national security and public safety.

Targeting Rules, Indicators and Scenarios

70. The role of the Targeting Rules, Indicators and Scenarios is to develop implement, and maintain commercial risk indicators and scenarios.

71. Key responsibilities for Targeting Rules, Indicators and Scenarios are:

- a. Supporting National Targeting Operations through the traveller scenario and commercial risk indicators development process for targeting by utilizing a rigorous monitoring and maintenance framework through which performance is reviewed;
- b. Validating, coding, activating, modifying, and deactivating scenarios and commercial risk indicators;
- c. Providing Scenario Element expertise to Targeting Intelligence officers to best capture the identified risk and to eliminate scenario overlap;
- d. Consulting with stakeholders across CBSA for commercial risk indicator development and maintenance as well as partnering with NTC and regional teams to operationalize projects;
- e. Evaluating scenario and risk indicator performance to support ongoing risk and scoring maintenance; and
- f. Maintaining Scenario Based Targeting and Commercial Risk Capability Lifecycle (CRCL) operational governance processes to ensure adherence to all legislation and agreements.

Targeting Data Analytics

72. The role of Targeting Data Analytics is to provide key data analysis and advisory services to the National Targeting Centre (NTC), eManifest project and internal and external CBSA stakeholders.

73. Key responsibilities for Targeting Data Analytics are:

- a. Spearheading analysis for scenarios and risk rule development, as well as developing the risk assessment process for both the traveller and commercial streams;
- b. Conducting data analysis to enhance the development of Business Profile analysis;
- c. Conducting post-seizure analysis to determine linkages to other shipments/entities for further risk assessment;
- d. Providing data analytics for other areas within the Agency, best practices, etc.

- e. Providing ad hoc services for Intelligence and Operations to provide further insight into entities, locations, etc.; and
- f. Acquiring internal and external data to enhance intelligence and targeting capabilities in the commercial and traveller streams.

CBSA Port of Entry and Regional Personnel

74. The role of CBSA Port of Entry and Regional Personnel is to support the National Targeting Program by intercepting and examining the people, goods and/or conveyances that have been targeted; report the results and provide any additional regional intelligence/investigative information and/or support, as required.
75. CBSA port of entry and regional personnel includes, but is not exclusive to, BSOs, superintendents, chiefs, regional intelligence, criminal investigations and support staff.
76. In addition, the targeting program is supported by a regional liaison between the regions, POE operations, the NTC Targeting Operations, and headquarters.
77. CBSA port of entry and regional personnel are collectively responsible for:
- a. Retrieving targets from the appropriate CBSA systems;
 - b. Prioritizing the examinations into the overall work load to ensure the interception of targets at the port of entry is efficiently and effectively managed;
 - c. Coordinating the movement of people, goods and conveyances to a safe examination area or to a CBSA examination facility;
 - d. Performing an examination of targeted people, goods and/or conveyances to confirm or mitigate the risk identified in the target, at the earliest point possible;
 - e. Using an intensity level during an examination that is appropriate for the risk indicators identified in the target and adjusting that level of intensity as the exam progresses, depending upon the discovery of new indicators or the mitigation of the risk identified in the target;
 - f. Performing inspections related to other government department (OGD) requirements (i.e. wood packaging and soil);
 - g. Liaising with intelligence partners prior to, during, and after examination of targeted entities as required;
 - h. Communicating actionable information regarding all potential National Security threats and/or contraband seizures at the earliest point possible, to ensure identification of associated threats;
 - i. Recording timely, complete, and comprehensive exam results into the appropriate system, whether the examination is resultant or non-resultant, after the secondary examination has been completed. Reference the CBSA Enforcement Manual Part 4, Chapters 14 and 15 for direction on results reporting for commercial and traveller streams, respectively;
 - j. Ensuring sufficient staffing levels to accommodate identified targets for examination, while maintaining established service standards at the POE;

- k. Providing valid reasons and justifications to management at the NTC through the appropriate channels as to why a target was not intercepted and/or examined; Reporting of trends, indices, observations or information of potential intelligence value that may improve the delivery of the National Targeting Program; and
- l. Ensuring open communication with the NTC Targeting Operations and the NTC Targeting Intelligence.

Targeting – Programs Branch

Targeting Program Unit

78. The role of the Targeting Program Unit is the development and management of national strategies, programs, policies and processes related to the CBSA's targeting programs

79. The Targeting Program Unit's key responsibilities are:

- a. Providing timely functional direction to Operations Branch, and program policy guidance to senior management on the targeting program;
- b. Developing program policy and strategies for current as well as future components (new systems, projects etc.) of the targeting program;
- c. Ensuring targeting training material (including system functionality) accurately reflects policy and future direction – in consultation with the Corporate Program Services area within the National Border Operations Centre (NBOC);
- d. Providing advice to, and collaborating with, international CBSA partners to share best practices, as well as participating in capacity building activities related to targeting; and
- e. Assessing targeting inputs to ensure they effectively support the targeting program.

PROCEDURES

80. Refer to the mode-specific targeting procedures in Appendix B.

REFERENCES

81. References and resources applicable to this policy include (listed in alphabetical order):

Access to Information Act

Access to Information and Privacy (ATIP) Reference Manual Advance Passenger Information/Passenger Name Record (API/PNR)

Program Privacy Impact Assessment and High-risk Traveller Initiative

Privacy Impact Assessment

CBSA Border Risk Management Plan

CBSA Enforcement Manual

CBSA Security Policies

Charter of Rights and Freedoms (the "Charter")

CIC Enforcement Manual

Criminal Code of Canada

Customs Act

Customs Directive Memoranda

Electronic Information and Documents Act

Immigration and Refugee Protection Act

Immigration and Refugee Protection Regulations

Lookout Creation and Maintenance – Memo to Directors, Intelligence and Targeting Operations Directorate – October 26, 2011 National Border Risk Assessment (NBRA)

Nuclear Safety and Control Act

Passenger Information (Customs) Regulations

Personal Information Protection and Electronic Documents Act

Policy on the Management of Information

Policy on the Management of Information Technology

Privacy Act

Proceeds of Crime (Money Laundering) and Terrorist Financing Act

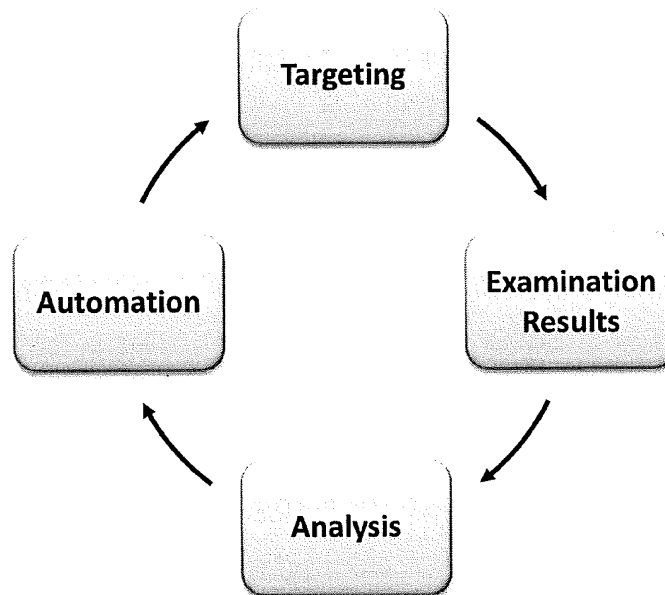
Protection of Passenger Information Regulations

Reporting of Exported Goods Regulations

Reporting of Imported Goods Regulations

Transportation of Dangerous Goods Act

APPENDIX A – Targeting Cycle



Targeting: Targeting officers employ training, knowledge, critical thinking and deductive reasoning informed by risk assessment systems and actionable intelligence to identify suspect high-risk people, goods, and conveyances.

Examination Results: Are used to acquit target issuance, confirm or negate the risk, inform targeting performance, and advance risk rule/scenario development

Analysis: The review of current intelligence, comparative enforcement analysis, and examination results inform the targeting processes, training and risk rule/scenario creation, modification, or deactivation.

Automation: Advance information received by the CBSA is run through automated risk assessment systems to assist the targeting officers in identifying high-risk people, goods and conveyances.

APPENDIX B – Mode-Specific Procedures

Air Passenger Targeting Procedures

INTRODUCTION

1. The Air Passenger Targeting Procedures contribute to the identification and interception of suspect high-risk travellers who may pose a threat to national security, public safety and the economic prosperity of Canada, and facilitates the movement of low-risk travellers. This document complements the Canada Border Services Agency (CBSA) National Targeting Policy by outlining the high-level air passenger targeting procedures and the subsequent roles and responsibilities of the implicated areas of the CBSA in relation to air passengers. Step-by-step procedures for the National Targeting Centre (NTC) can be found in the *Air Passenger Targeting Standard Operating Procedures*.

SYSTEMS

2. Targeting officers will use CBSA and Immigration, Refugees and Citizenship Canada (IRCC) enforcement systems and internal and external systems including “open source” information via the Internet to perform queries to confirm or negate risk.
3. Targeting officers must be trained in the use of and have appropriate access to the following systems (list may be subject to change):
 - a. Canadian Police Information Centre(CPIC)
 - b. Client Status Query (CSQ)
 - c. Global Case Management System (GCMS)
 - d. Integrated Border Query (IBQ)
 - e. Integrated Customs Enforcement System (ICES)
 - f. Intelligence Management System(IMS)
 - g. National Case Management System (NCMS)
 - h. Passenger Information System (PAXIS)
 - i. Secure Tracking System (STS)
 - j. Interpol

ROLES AND RESPONSIBILITIES

4. This section describes the roles and responsibilities of all CBSA employees impacted by the air passenger targeting program, including but not exclusive to the:
 - Targeting Officer;
 - Targeting Supervisor; and

- Targeting Intelligence³.

Targeting Officer

5. In addition to the roles and responsibilities outlined in this policy, a targeting officer is responsible for:
 - a. Maintaining knowledge of current targeting indicators, including the trends used to identify high-risk travellers;
 - b. Adhering to all legislative and regulatory requirements pertaining to the access, use, retention, and disposal of Advance Passenger Information and Passenger Name Record (API/PNR) data;
 - c. Ensuring all mandatory system queries are completed, as required;
 - d. Identifying and communicating commercial linkages attributed to a traveller;
 - e. Documenting the target information in ICES including indicators, consultations, other factors and actions taken using CBSA systems leading to the issuance of a target to facilitate follow-up activities including performance monitoring, program and operational reporting and intelligence analysis;
 - f. Creating occurrences in IMS for national security targets, significant resultant targets or occurrences of potential intelligence value when required, to ensure follow-up by the Targeting Operations - Intelligence; and
 - g. Prioritizing tasks based on the daily assignment provided by the targeting supervisor ensuring all tasks and priorities are completed, as required, in accordance with national targeting priorities.

Targeting Supervisor

6. In addition to the roles and responsibilities outlined in this policy, a targeting supervisor is responsible for:
 - a. Monitoring the use of PAXIS to ensure compliance with legislative and regulatory requirements pertaining to the access, use, retention and disposal of API/PNR data;
 - b. Ensuring all travellers that are identified on the Scenario-Based Targeting (SBT) work-list are completed daily to ensure accountability and follow-up;
 - c. Reviewing and monitoring the SBT work-list to ensure travellers are risk assessed in accordance with national priorities and in consideration of significant security events and exigent time sensitive intelligence;
 - d. Ensuring follow-up on missed targets and missing examination reports;

³ It is the responsibility of Targeting Intelligence to consult and share information with file holders, such as Regional Intelligence Officers and other law enforcement agencies, to confirm known risks such as archived and active lookouts and outstanding warrants, etc.

- e. Responding to Targeting Intelligence requests regarding incomplete or missing occurrences in IMS; and
- f. Conducting reviews on targets issued for national security and/or public safety priorities to ensure accuracy and consistency, contributing to systematic improvement.

STEP BY STEP PROCEDURES

- 7. Targeting officers will conduct targeting activities primarily using the SBT work-list. PAXIS flight lists will be made available under specific situations including but not limited to SBT or system outages.
- 8. All travellers on the SBT work-list will be reviewed and the resulting information obtained from system queries and consultations will assist the targeting officer in making the decision to issue a target.

Advance Information

- 9. The airline industry provides the API/PNR data electronically to the CBSA and is received in PAXIS.

PAXIS Processing

- 10. API/PNR information is queried against all SBT scenarios to identify scenario matches for all risks.
- 11. API information is queried against CBSA and IRCC enforcement systems to identify known risks and passage history.
- 12. PAXIS generates the SBT work-list that displays all travellers who match one or more scenario(s) sorted by estimated time of arrival (ETA).

Cursory Review

- 13. The targeting officer will perform a cursory review on all travellers on the SBT work-list, by conducting additional system queries and consultations to negate risk, which includes:
 - a. Reviewing and confirming the details of the PAXIS queries
 - b. Conducting mandatory IBQ, GCMS, IMS, Interpol and basic open source queries and verifying the results
 - c. Consulting with Targeting Operations - Intelligence, if required
 - d. Reviewing the API/PNR data elements and the indicators
- 14. If the targeting officer cannot negate the risk after the cursory review, the targeting officer must proceed to the comprehensive review.

Comprehensive Review and Consultations

15. A targeting officer will conduct mandatory and/or optional system queries and consultations for all risks to national security and/or public safety priorities prior to issuing a target. (Refer to Chart A)
16. A targeting officer may be required to consult with the CBSA International Operations Division, foreign targeting centres, and/or other government agencies in accordance with the Written Collaborative Agreements (WCA) and the NTC Standard Operating Procedures.
17. If an IMS file or active lookout exists on a traveller, a targeting officer must notify and consult with the originating file holder or author for further review prior to issuing a target to ensure validity of information and to avoid duplication.

Target Issuance and Communications

18. If the targeting officer cannot negate the risk after the comprehensive review, a customs or an immigration target will be issued in ICES. The validity period for a target will be a maximum of 7 days and may be extended if required.
19. It is mandatory to finalize the status of all travellers on the SBT work-list after the cursory or the comprehensive review.
20. An entry is made in the NTC Log that records the target details and includes the IMS occurrence file number, if required.
21. The targeting officer returns to the assigned duties and selects the next traveller for review.

CHART A – SYSTEM QUERIES AND CONSULTATIONS

The chart below summarizes the mandatory and optional system queries and consultations that take place during a targeting officer's comprehensive review of travellers on the SBT work-list. This chart is not intended to limit a targeting officer's discretion or judgment; rather it is intended as a guideline to assist in making the decision to issue a target. All system queries could result in the detection of additional indicators that could lead a targeting officer to issuing a successful target.

Risk Category	Mandatory		Optional	
	Systems	Consultations	Systems	Consultations
National Security	IBQ CPIC INTERPOL CPIC - NCIC PAXIS GCMS ICES ICS-PH IMS NCMS STS	Targeting Intelligence CSIS RCMP US CBP CRA	CPIC-Provincial Motor Vehicle Agencies (PMVA) ICES-AQ International Air Transport Association (IATA) STS Internet open source searches CSQ NCMS	
Public Safety Priorities	IBQ GCMS ICES ICS traveller query PAXIS GCMS IMS Interpol CPIC/NCIC Basic Open Source		CPIC-INTERPOL CPIC-NCIC CPIC-PMVA GCMS IATA ICS-PH IMS NCMS STS CSQ NCMS Internet open source searches	Targeting Intelligence CSIS RCMP US CBP

Air Cargo Targeting Procedures

INTRODUCTION

1. Pre-arrival targeting of air cargo destined to Canada onboard commercial aircraft contributes to the identification and interception of suspected high-risk goods that may pose a threat to the health, safety and security of Canada while facilitating the movement of low-risk goods. This document complements the Canada Border Services Agency (CBSA) National Targeting Policy by outlining the high-level air cargo targeting procedures and the subsequent roles and responsibilities of the implicated areas of the CBSA in relation to air cargo. Step-by-step procedures for the National Targeting Centre (NTC) can be found in the National Targeting Centre Advance Commercial Information Air Mode Procedures.
2. This document does not include procedures for the risk assessment of courier low-value shipments.

ROLES AND RESPONSIBILITIES

Targeting Officer

3. In addition to the roles and responsibilities outlined in this Policy, targeting officers are responsible for:
 - a. Adhering to the policies and procedures related to the use of systems for air cargo targeting, as well as the protection of targeting information as stated in the CBSA National Targeting Policy;
 - b. Attaining the necessary knowledge of current indicators, including trends and patterns specific to the import and export of air cargo;
 - c. Performing mandatory consultations required for suspected risks to national security;
 - d. Generating air cargo targets to alert appropriate CBSA personnel of a suspected risk to national security and/or public safety priorities⁴; and
 - e. Ensuring target information is presented in a clear and timely manner to the appropriate POE to ensure the interdiction and examination of the targeted goods.

Targeting Supervisor

4. In addition to the roles and responsibilities outlined in this Policy, targeting supervisors are responsible for:

⁴ Public safety priorities include, but are not exclusive to, contraband, illicit migration and other government department (OGD) requirements.

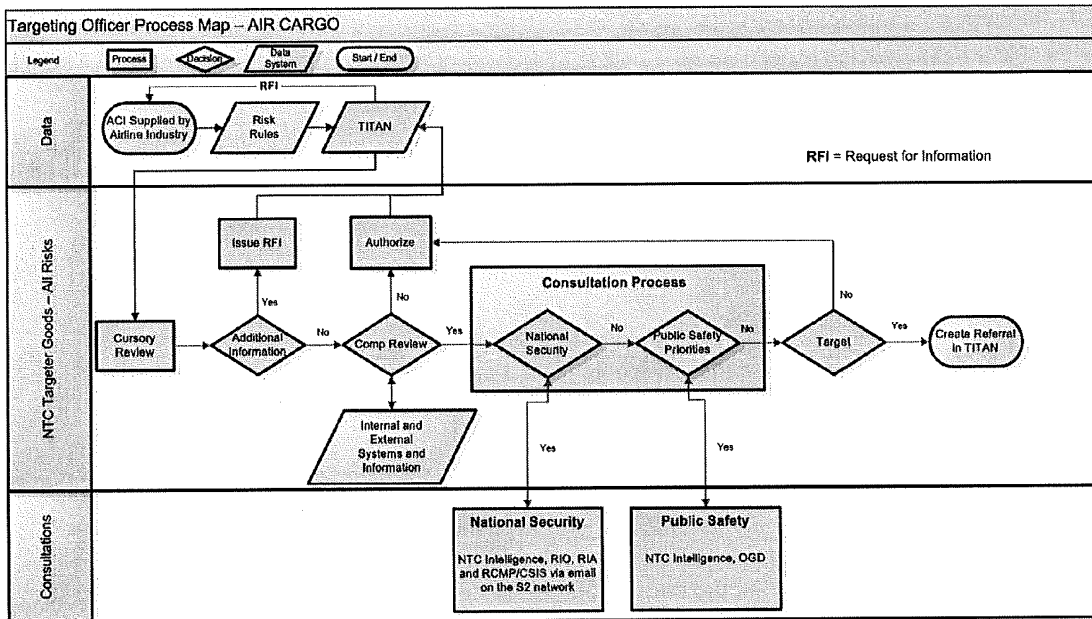
- a. Assisting targeting officers in coordinating high-risk cases with the Port of Entry where examinations will take place

AIR CARGO SYSTEMS

5. The air cargo targeting procedures include using a variety of internal and external systems to query and verify advance information received by the CBSA.
6. Targeting officers will have access to open source searching of the Internet when performing in-depth comprehensive reviews.
7. According to the CBSA National Targeting Policy, all targeting officers must be trained in the use and application of systems used for air cargo targeting.
8. Targeting officers must have the appropriate profile and/or permission for access to the following systems (list may be subject to change):
 - a. Integrated Border Query (IBQ)
 - b. Integrated Customs Enforcement System(ICES)
 - c. Intelligence Management System (IMS)/Occurrence Reporting System (ORS)
 - d. Canadian Police Information Centre(CPIC)
 - e. Customs Commercial System (CCS)
 - f. TITAN – Air
 - g. Accelerated Commercial Release Operations Support System (ACROSS)
 - h. Business Number (BN)
 - i. Facility for Information Retrieval Management (FIRM)
 - j. Info-Direct
9. All systems verifications and queries may only be performed to confirm or negate risk.

PROCESS MAP

Note: The complete targeting cycle is not depicted in the following process map. This work flow depicts the targeting officer's process for air cargo targeting. Beginning with the receipt of advance information and ending with a decision of whether or not to issue a target. Therefore, examination and closing of the loop processes, post-arrival intelligence analysis and the development of new indicators and the customs release function are not included in this process flow as they are outside the scope of the targeting officer's functions and activities.



SUMMARY OF THE PROCESS MAP

10. Advance Commercial Information (ACI) data is electronically sent from the relevant trade chain partner and received by the CBSA. The data is automatically queried against enforcement systems and risk rules are applied to display a work list in TITAN.
11. The targeting officer performs a cursory review of the information and determines if there is missing information or additional information is required.
12. A comprehensive review may be performed to identify additional risk indicators, as well as to confirm or negate identified risks affecting national security and/or public safety priorities.
13. The targeting officer will issue a Request for Information (RFI) to the relevant trade chain partner if needed.
14. Requests for information and risk assessment notices are sent via the same electronic data interchange (EDI) route as the incoming transmission.
15. Consultations may take place with appropriate partners, if required.
16. The resulting information provided from system queries and any consultations conducted feed into the decision of whether or not to issue a target.

STEP BY STEP PROCEDURES

17. This section provides a more detailed explanation of the targeting officer work flow and the specific procedures used to make the decision to issue a target.

Advance Commercial Information

18. ACI data is supplied to the CBSA by the relevant trade chain partner according to the time frames listed in the Reporting of Imported Goods Regulations.

Automated Risk Rules Processing

19. ACI data is automatically queried against enforcement systems and risk rules are applied to attribute a score; subsequently, a work list is displayed in TITAN for the targeting officer.

Cursory Review

20. The targeting officer performs an initial review of the work list to:

- a. Determine if there is missing information, or additional information is required in order to risk assess the goods;
- b. Identify national security risks; and
- c. Identify risks associated with public safety priorities.

21. The targeting officer will "Authorize" the goods in TITAN if all risks have been negated after the cursory review.

22. Any high-risk goods that have been identified through risk scoring and the targeting officer's cursory review are selected for a comprehensive review.

Comprehensive Review

23. The targeting officer will issue a Request for Information (RFI) if data is missing or additional information is required in order to perform a risk assessment.

24. All goods undergoing a comprehensive review require mandatory system queries.

25. Suspected risks to national security and/or public safety priorities require the following mandatory system checks:

- a. IBQ;
- b. ICES;
- c. IMS;
- d. CCS; and
- e. BN.

26. Suspected risks to national security and/or public safety priorities may also include the following system checks:
- a. FIRM;
 - b. ACROSS;
 - c. INTERPOL;
 - d. Info-Direct; and
 - e. Random Access Personal Information Data (RAPID) system (to be conducted by the Canada Revenue Agency embedded employee at the NTC).
27. The targeting officer may also query other databases and perform open and closed source searches of the Internet to verify or negate the risk during the comprehensive review.
28. The targeting officer will "Authorize" the goods in TITAN if all risks have been negated following the comprehensive review.

Consultations

29. Targeting officers may conduct consultations with internal and external CBSA partners, including embedded partners prior to making a decision to issue a target.
30. Suspected risks to national security require the following **mandatory** consultations:
- a. Targeting Supervisor;
 - b. NTC Targeting Intelligence; and
 - c. The RCMP and CSIS via S2 secure email
31. Suspected risks to public safety priorities may require the following consultations prior to issuing a target:
- a. Targeting Supervisor;
 - b. NTC Targeting Intelligence;
 - c. Appropriate OGD; and/or
 - d. CBSA OGD Programs.

Issuing the Target

32. If the suspected risk cannot be negated, the targeting officer must issue a target in TITAN.
33. The targeting officer will provide detailed and relevant information about the goods in TITAN, including the reason(s) for the target, indicators presented and any suggestions for the examining POE personnel.

34. If the POE personnel require further information concerning an issued target, the regional program officers (targeting) will be the liaison between the POE and the NTC. However, under urgent circumstances and outside of regular business hours, the POE can contact the NTC supervisors directly either by email at the NTC Supervisor's mailbox or by phone at

Notification and Follow-up

35. If the targeted goods are arriving at a non-automated POE, the following steps are to be followed:

- a. The targeting officer must notify the targeting supervisor of the impending target.
- b. The targeting supervisor will:
 - i. Notify the appropriate POE personnel by telephone or email that a target is inbound;
 - ii. Send the target information via email or secure fax (if available) to the appropriate POE;
 - iii. Confirm the POE is in receipt of the target; and
 - iv. Follow up with the POE to ensure the exam results are communicated to the NTC targeting operations, as soon as is operationally feasible.

36. Formal post-arrival and trend analysis will be conducted by the appropriate units within the NTC. Regional Intelligence units will forward any significant post-arrival intelligence from seizures and examinations to the NTC Targeting Intelligence.

37. The development of indicators and risk rules will be conducted by the appropriate units within the NTC. Regional Intelligence units will forward any significant post-arrival intelligence from seizures and examinations to the NTC Targeting Intelligence.

Marine Cargo Targeting Procedures

INTRODUCTION

1. Pre-arrival targeting of marine cargo destined to Canada onboard commercial vessels contributes to the identification and interception of suspected high-risk goods that may pose a threat to the health, safety and security of Canada while facilitating the movement of low-risk goods. This document complements the Canada Border Services Agency (CBSA) National Targeting Policy by outlining the high-level marine cargo targeting procedures and the subsequent roles and responsibilities of the implicated areas of the CBSA in relation to marine cargo. Step-by-step procedures for the NTC can be found in the *National Targeting Centre Marine Cargo Targeting Standard Operating Procedures* and the *National Targeting Centre Marine Post-load Targeting Standard Operating Procedures*.

ROLES AND RESPONSIBILITIES

Targeting Officer

2. In addition to the roles and responsibilities outlined in this policy, targeting officers are responsible for:
 - a. Completing all mandatory training to conduct marine cargo targeting as per the National Training Standards;
 - b. Obtaining the necessary knowledge of current indicators, including trends and patterns specific to the import and export of marine cargo;
 - c. Performing mandatory consultations required for suspected risks to national security;
 - d. Generating marine cargo targets to alert appropriate CBSA personnel of a suspected risk to national security and/or public safety priorities⁵;
 - e. Ensuring target information is presented in a clear and timely manner to the appropriate POE to ensure the interdiction and examination of the targeted goods;
 - f. Responding to RadNet alarms⁶ according to the *CBSA Radiation Detection SOPs*;
 - g. Identifying risks to national security and issuing "Do Not Load" (DNL) and "Do Not Unload" (DNU) notices on containers as required; and
 - h. Recording relevant details when a DNU notice has been issued, in order to notify the appropriate POE.

⁵ Public safety priorities include, but are not exclusive to, contraband, illicit migration and other government department (OGD) requirements.

⁶ Portal detectors, comprised of two 15 foot high panels affixed to the ground, are operating at Canada's major marine terminals. As vehicles drive through them, the panels are able to detect the presence and level of radiation. The NTC is the first to be notified when a portal has detected radiation. The source is identified and determined if it is legitimate or illicit.

Targeting Supervisor

3. In addition to the roles and responsibilities outlined in this policy, targeting supervisors of marine cargo targeting are responsible for:
 - a. Approving the issuance of DNL and DNU notices when a potential national security risk has been identified or significant intelligence received; and
 - b. Notifying the appropriate regional personnel, using the RADNet marine contact list, when a DNU notice is issued and providing the necessary vessel and container details, including the reasons for issuing the DNU notice.

CBSA POE and Regional Personnel

4. In addition to the roles and responsibilities outlined in this policy, POE and regional personnel are responsible for:
 - a. Notifying the responsible marine operational team of the vessel and container details when a DNU notice has been issued; and
 - b. Monitoring vessel and cargo operations to ensure that containers with issued DNU notices are not unloaded.

MARINE CARGO SYSTEMS

5. The marine cargo targeting procedures include using a variety of internal and external systems to query and verify advance information received by the CBSA.
6. Targeting officers will have access to open source searching of the Internet when performing in-depth comprehensive reviews.
7. According to the CBSA National Targeting Policy all targeting officers must be trained in the use and application of systems used for marine cargo targeting.
8. Targeting officers must have the appropriate profile for access to the following systems (list may be subject to change):
 - a. Integrated Border Query (IBQ)
 - b. Integrated Customs Enforcement System (ICES)
 - c. Intelligence Management System (IMS)/Occurrence Reporting System (ORS)
 - d. Canadian Police Information Centre Web (CPIC)
 - e. Customs Commercial System (CCS)
 - f. TITAN – Marine and US Marine In-transit
 - g. Accelerated Commercial Release Operations Support System (ACROSS)

Part 3 Chapter 1

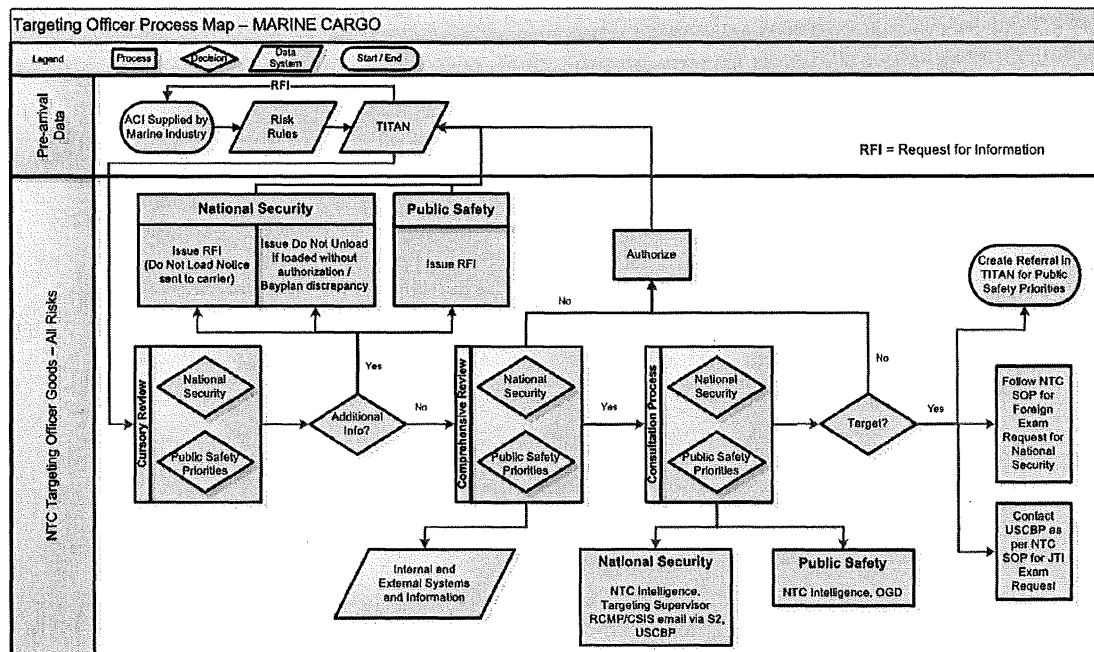
Targeting

- h. Business Number (BN)
- i. Facility for Information Retrieval Management (FIRM)
- j. Info-Direct
- k. Customs Referral and Inspection Management (CRIM)

9. All systems verifications and queries may only be performed to confirm or negate risk.

PROCESS MAP

Note: The complete targeting cycle is not depicted in the following process map. This work flow depicts the targeting officer's process for marine cargo targeting. Beginning with the receipt of advance information and ending with a decision of whether or not to issue a target. Therefore, examination and closing of the loop processes, post arrival intelligence analysis and the development of new indicators and the customs release function are not included in this process flow as they are outside the scope of the targeting officer's functions and activities.



SUMMARY OF PROCESS MAP

10. ACI data is electronically sent from the relevant trade chain partner and received by the CBSA. The data is automatically queried against enforcement systems and risk rules are applied to display a work list in TITAN.

11. The targeting officer performs a cursory review of the work list and determines if there is missing information or additional information required.
12. A comprehensive review may be performed to identify additional risk indicators, as well as to confirm or negate identified risks affecting national security and/or public safety priorities.
13. National security risks are identified prior to the cargo being loaded onboard a vessel at a foreign port. A DNL notice is sent to the relevant trade chain partner if the CBSA targeting officer has sent a request for information (RFI) or a national security risk has been confirmed.
14. In cases where it has been determined that a container is loaded without authorization, a DNU notice is sent to the relevant trade chain partner.
15. DNU notices are sent via the same electronic data interchange (EDI) route as the incoming transmission.
16. Consultations may take place with appropriate partners, if required.
17. The resulting information provided from system queries and any consultations conducted feed into the decision of whether or not to issue a target.

STEP BY STEP PROCEDURES

18. This section provides a more detailed explanation of the targeting officer work flow and the specific procedures used to make the decision to issue a target.

Advance Commercial Information

19. ACI data is supplied to the CBSA by the relevant trade chain partner according to the time frames listed in the Reporting of Imported Goods Regulations.

Automated Risk Rules Processing

20. ACI data is automatically queried against enforcement systems and risk rules are applied to attribute a score; subsequently, a work list is displayed in TITAN for the targeting officer.

Cursory Review

21. The targeting officer performs an initial review of the work list to:
 - a. Determine if there is missing information or additional information is required in order to risk assess the goods;

- b. Identify national security risks; and
 - c. Identify risks associated with public safety priorities.
22. The targeting officer will "Authorize" the goods in TITAN if all risks have been negated after the cursory review.
23. Any high-risk goods that have been identified by automated risk indicators and the targeting officer's cursory review are selected for a comprehensive review.

Comprehensive Review

24. The targeting officer will issue a Request for Information (RFI) if data is missing or additional information is required in order to perform a risk assessment.
25. If there is insufficient information to conduct a risk assessment for national security, a RFI will be issued with a DNL notice to ensure that the cargo is not loaded onboard the vessel at the foreign port of departure. Detailed procedures for DNL notices are outlined in the National Targeting Centre Marine Cargo Targeting Standard Operating Procedures. A RFI issued with a DNL notice is only to be issued prior to the estimated date and time of loading that is electronically submitted to the CBSA by the marine carriers.
26. Once all the information has been received and the risk assessment can be completed, depending upon the results of the review, the targeting officer will:
- a. Keep the DNL notice in place and request an overseas examination; or
 - b. "Authorize" the container, which automatically cancels the DNL notice; or
 - c. Refer the container for an examination at the FPOA.
27. If it is determined that a container with a DNL notice has been loaded without authorization, the targeting officer, with the permission of a supervisor, will issue a DNU notice to the carrier. A DNU notice can also be issued while the vessel is en-route if additional significant intelligence information is received that a container may be a risk to national security.
28. The following steps must be followed when issuing a DNU notice:
- a. Record vessel particulars and container details;
 - b. Notify the NTC targeting supervisor to obtain senior management approval to issue a DNU notice in TITAN;
 - c. The NTC targeting supervisor will notify and liaise with internal and external partners as required following established communication protocols. Internal and external partners include, but are not limited to, the National Border Operations Centre (NBOC), Regional POE, CBSA Intelligence, Marine

Security Operations Centres (MSOC), Transport Canada, and Port Authorities;

- d. The NTC targeting supervisor will phone and/or email the applicable marine port using the RADNet contact list in order to notify them that a DNU notice has been issued on a container. At a minimum, the NTC must provide the following details:
 - i. Vessel details: name, estimated date and time of arrival, name of terminal of arrival;
 - ii. Container details: container number, cargo information, reasons identified as a national security risk;
 - e. The NTC targeting supervisor will notify the NTC Marine Vessel and Crew targeting unit, in order to refer the vessel in the Vessel Analysis and Targeting System (VATS) for monitoring upon arrival; and
 - f. The referral will note that there is a container onboard the vessel with an active DNU notice, reasons for the DNU, and the DNU vessel and container details.
29. If outstanding RFI data and/or further intelligence information is received that negates the risk prior to the vessel arriving at the FPOA, then the DNU notice will be cancelled by following these steps:
- a. Search the CCN or container number in TITAN and return it to "awaiting cursory" status using the "awaiting cursory" button, and cancel the DNU;
 - b. Authorize or refer the container for examination at FPOA in the system;
 - c. Notify the port of entry that the DNU has been cancelled; and
 - d. Determine whether or not to also cancel the vessel referral in VATS.
30. If the container remains onboard the vessel and departs Canada, liaise with internal and external partners as required (i.e. US CBP if vessel is continuing to the United States).
31. All goods undergoing a comprehensive review require mandatory system queries.
32. Suspected risks to national security and/or public safety priorities require the following **mandatory** system checks:
- a. IBQ;
 - b. CPIC;
 - c. CCS;
 - d. BN; and
 - e. IMS
33. Suspected risks to national security and/or public safety priorities may also include the following system checks:

- a. FIRM;
 - b. ACROSS;
 - c. Info-Direct;
 - d. Interpol; and
 - e. Random Access Personal Information Data (RAPID) system – to be conducted by the Canada Revenue Agency embedded employee at the NTC.
34. The targeting officer may also query other databases, and perform open and closed source searches of the internet to verify or negate the risk during the comprehensive review.
35. The targeting officer will “Authorize” the goods in TITAN if all risks have been negated following the comprehensive review.

Consultations

36. Targeting officers may conduct consultations with internal and external CBSA partners, including embedded partners prior to making a decision to issue a target.
37. Suspected risks to national security require the following **mandatory** consultations:
- a. Targeting Supervisor;
 - b. NTC Targeting Intelligence;
 - c. RCMP and CSIS via S2 secure email; and
 - d. In the event that an overseas examination is required, consultation procedures for “Referral for Foreign Examination - High Risk Assessment”⁷ are to be followed.
38. Suspected risks to public safety priorities may require the following consultations prior to issuing a target:
- a. Targeting Supervisor;
 - b. NTC Targeting Intelligence;
 - c. Appropriate OGD; and/or
 - d. CBSA OGD Programs Unit.

⁷ These procedures are outlined in the National Targeting Centre Marine Cargo Targeting Standard Operating Procedures. This document includes the SOPs that are currently in effect at the NTC for national security risks.

39. Joint Targeting Initiative (JTI)⁸:

- a. The targeting officer performs a risk assessment of in-transit marine containers while en-route to the first point of arrival in the United States with a final destination at a Canadian port.
- b. If a risk is identified, the CBSA targeting officer will contact the US CBP targeting officer, as per agreed upon protocols, to arrange an examination⁹ at the first point of arrival.
- c. The targeting officer receives verification from US CBP that the exam request has been received and exam results will be provided to the issuing targeting officer once completed.

Issuing the Target

40. If the suspected risk to public safety priorities cannot be negated, the targeting officer must issue a target in TITAN.
41. The targeting officer will provide detailed and relevant information about the goods in TITAN, including the reason(s) for the target, indicators presented and any suggestions for the examining POE personnel.
42. If the POE personnel require further information concerning an issued target, they can contact the NTC targeting officers directly by phone at _____ or toll free at 1-855-682-1262; press 1 for English or 2 for French; press 1 for Targeting Operations Goods; press 1 for Marine; press 1 for Containers. In an urgent or emergency situation, the POE personnel can contact the NTC Supervisors by phone at _____

Notification and Follow-up

43. If the targeted goods are arriving at a non-automated POE, the following steps are to be followed:
 - a. The targeting officer must notify the targeting supervisor of the impending target.
 - b. The targeting supervisor will:
 - i. Notify the appropriate POE personnel by phone or email that a target is inbound;
 - ii. Send the target information via email or secure fax (if available) to the appropriate POE;

⁸ Through a reciprocal agreement the CBSA and US CBP share pre-arrival cargo data on marine containers that are arriving in North America. This means that the CBSA can access the US CBP pre-arrival data to identify high-risk containers that are transiting the US with a final destination in Canada and request that the US CBP perform a secondary exam to negate the risk identified.

⁹ Secondary examinations consist of a radiation detection screening and a VACIS scan or full off load (de-stuff) of the container.

- iii. Confirm the POE is in receipt of the target; and
 - iv. Follow up with the POE to ensure the exam results are communicated to the NTC targeting operations, as soon as is operationally feasible.
44. Formal post-arrival and trend analysis will be conducted by the appropriate units within the NTC. Regional Intelligence units will forward any significant post-arrival intelligence from seizures and examinations to the NTC Targeting Intelligence.
45. The development of indicators and risk rules will be conducted by the appropriate units within the NTC. Regional Intelligence units will forward any significant post-arrival intelligence from seizures and examinations to the NTC Targeting Intelligence.

Marine Commercial Vessel and Crew/Non-Crew Targeting Procedures

INTRODUCTION

1. Pre-arrival targeting of commercial marine vessels destined to Canada, including crew, and non-crew¹⁰ members onboard, contributes to the identification and interception of suspected high-risk goods and people that may pose a threat to the health, safety and security of Canada while facilitating the movement of those that are low-risk. This document complements the Canada Border Services Agency (CBSA) National Targeting Policy by outlining the high-level commercial marine vessel targeting procedures and the subsequent roles and responsibilities of the implicated areas of the CBSA in relation to commercial marine vessels. Step-by-step procedures for the NTC can be found in the *National Targeting Centre Marine Crew & Vessel Targeting Standard Operating Procedures*.
2. The monitoring of coastwise movements for vessels and crew/non-crew members that have already entered and been admitted into Canada is not part of the risk assessment and targeting functions at the NTC.
3. The risk assessment of Cruise Ship Passengers and Crew are not included in this document.

ROLES AND RESPONSIBILITIES

Targeting Officer

4. In addition to the roles and responsibilities outlined in this policy, targeting officers are responsible for:
 - a. Completing all mandatory training to conduct marine vessel and crew/non-crew targeting as per the National Training Standards;
 - b. Adhering to the policies and procedures related to the use of systems for marine vessel and crew/non-crew targeting, as well as the protection of targeting information as stated in the CBSA National Targeting Policy;
 - c. Knowledge of current indicators, including trends and patterns pertaining to the international movement of marine vessels and crew/non-crew members;
 - d. Performing mandatory consultations required for suspected risks to national security;

¹⁰ If a person onboard a commercial conveyance does not meet the definition of a "crew member" under section 3 of the *Immigration and Refugee Protection Regulations*, they are considered non-crew. A non-crew member includes persons such as supernumeraries, fare-paying passengers, workaways, foreign contractors and shipping company technicians, and shipping company superintendents.

- e. Generating marine vessel, crew and non-crew targets to alert appropriate CBSA personnel of a suspected risk to national security and/or public safety priorities¹¹;
- f. Ensuring target information is presented in a clear and timely manner to the appropriate POE to ensure the interdiction and examination of the targeted vessel and the crew and non-crew members onboard; and
- g. Building and maintaining strong working relationships with shipping agents and relevant trade chain partners.

Junior Program Officer

5. Junior program officers are responsible for:

- a. Manually entering the information from the Pre-Arrival Notice (PAN) into the Vessel Analysis and Targeting System (VATS);
- b. Performing an initial review of the PAN and crew/non-crew lists to determine if there is any missing or additional information required;
- c. Requesting missing or additional information from the shipping agent or relevant trade chain partner by phone or email; and
- d. Following up with the shipping agent or relevant trade chain partner if no response is received from the original request for further information.

Note: Questions on VATS can be sent directly to CBSA HQ at
 Please refer to the [CBSA Wiki](#) for additional information on VATS.

CBSA POE and Regional Personnel

6. In addition to the roles and responsibilities outlined in this policy, POE and regional personnel are responsible for:
- a. Monitoring all vessel arrivals in the Vessel Analysis and Targeting System (VATS) on a regular basis to:
 - i. Retrieve NTC targets and determine the operational capacity for examinations of targeted marine vessels and crew/non-crew members at the POE;
 - ii. Determine which vessels will be boarded on a selective basis;
 - b. Obtaining copies of the crew/non-crew list for a vessel, that the NTC has made available, in preparation of a selective boarding;
 - c. Monitoring the port authority and/or local pilotage websites, as well as applications such as MDA Watchkeeper to track vessels in their respective area of responsibility, since VATS does not provide real-time updates to arrival times as well as to monitor vessels that have not provided the CBSA with advance notice of their arrival;
 - d. Intercepting and examining all targets at the first port of arrival;

¹¹ Public safety priorities include, but are not exclusive to, contraband, illicit migration and other government department (OGD) requirements.

- e. Coordinating rummages and examinations of targeted marine vessels and crew/non-crew members, including inspections related to other government department (OGD) requirements (i.e. wood dunnage and animals);
- f. Liaising with intelligence partners prior to, during, and after rummage and examination of targeted vessels and crew/non-crew members, as required;
- g. Recording timely, complete and comprehensive secondary examination results (including vessels that were targeted and those that were chosen as a selective boarding), whether the examination is resultant or non-resultant, in VATS; and
- h. Providing valid reasons and justifications within VATS if a target was not intercepted and/or examined.

Note: Please refer to the VATS Job Aids on the CBSA Wiki for the most up-to-date information.

VESSEL AND CREW SYSTEMS

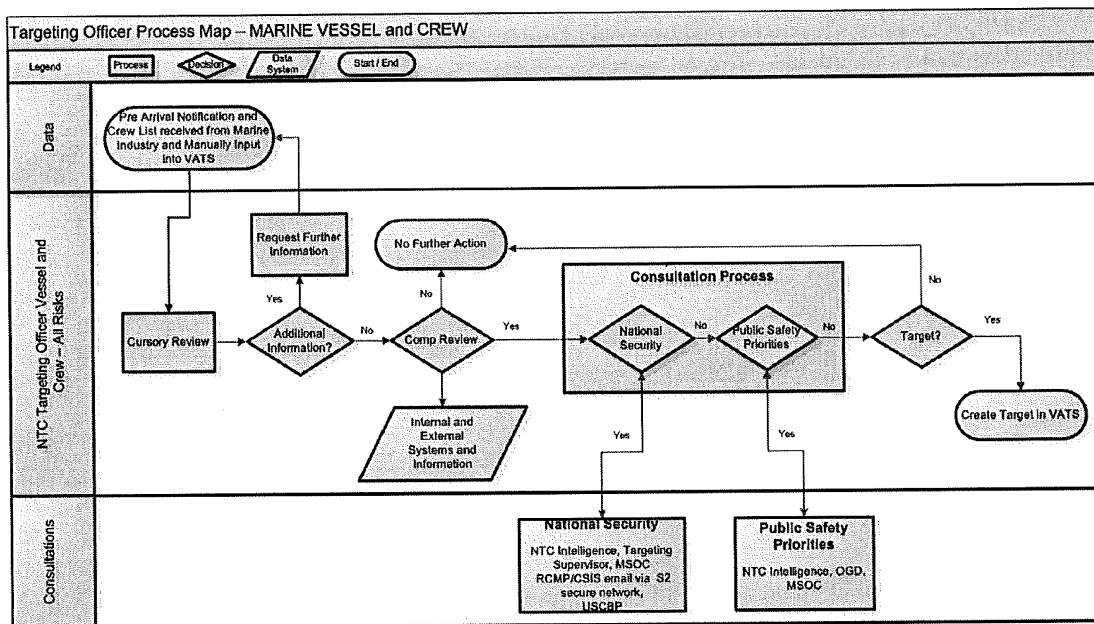
- 7. VATS will be used by the targeting officers during their risk assessment process and the issuance of targets. VATS is a web-based system and is an interim solution until the eManifest risk assessment tool is available.
- 8. In addition to VATS, the marine vessel and crew/non-crew targeting procedures include using a variety of internal and external systems to query and verify advance information received by the CBSA.
- 9. Targeting officers will have access to closed and open source searching of the internet when performing reviews.
- 10. According to the *CBSA National Targeting Policy*, all targeting officers must be trained in the use and application of systems used for marine vessel and crew/non-crew targeting.
- 11. Targeting officers must have the appropriate profile for access to the following systems (list may be subject to change):
 - a. Vessel Analysis and Targeting System (VATS)
 - b. Integrated Border Query (IBQ)
 - c. Integrated Customs Enforcement System (ICES)
 - d. ICES Library
 - e. Intelligence Management System (IMS)/Occurrence Reporting System (ORS)
 - f. Canadian Police Information Centre Web (CPIC)
 - g. INTERPOL
 - h. TITAN – Marine
 - i. Global Case Management System (GCMS)

- j. MDA Watchkeeper
- k. Information System on Marine Navigation (INNAV)
- l. Port specific pilotage websites
- m. Secure Network (S2)
- n. MDA Watchkeeper

12. All system queries may only be performed to negate or verify risk.

PROCESS MAP

Note: The complete targeting cycle is not depicted in the following process map. This work flow depicts the targeting officer's process for marine vessel and crew/non-crew targeting. Beginning with the receipt of advance information and ending with a decision of whether or not to issue a target. Therefore, examination and closing of the loop processes, post-arrival intelligence analysis and the development of new indicators and the customs release function are not included in this process flow as they are outside the scope of the targeting officer's functions and activities.



SUMMARY OF PROCESS MAP

13. A Pre-Arrival Notice (PAN form BSF732), crew list (IMO FAL Form 5), and a separate list for non-crew members, if applicable (IMO FAL Form 6) are sent from the shipping agent or relevant trade chain partner to the CBSA.

14. The PAN data requirements are listed within Appendix A of the *People Processing Manual* (PPM), Part 2, Chapter 5: "Clearance Procedures for Vessels Other than Cruise Ships". Paragraph 4, Part 2, Chapter 5 of the PPM states:

"Normally, arrangements to clear a vessel in international service will be made with the CBSA in advance, either by the ship's agent or master. The CBSA requires at least 96 hours' notice to arrange for clearance of the vessel. This requirement may vary, depending on the geographical location. In the Great Lakes area, for example, the notification period is shorter due to the proximity of United States ports..."

15. The PAN data is manually entered by the junior program officer (JPO) into VATS, completing all relevant fields as per the training provided. If a JPO is not on duty, a targeting officer will enter the data.
16. The JPO performs an initial review of the PAN and crew/non-crew lists to determine if there is any missing or additional information required.
17. The JPO will request missing or additional information from the shipping agent or relevant trade chain partner by phone or email, if required.
18. The targeting officer will conduct a cursory review of the PAN data input into VATS as well as the crew/non-crew lists. A comprehensive review may be performed to identify additional risk indicators, as well as to confirm or negate identified risks affecting national security and/or public safety priorities.
19. Consultations may take place with appropriate partners, if required.
20. The resulting information provided from system queries and any consultations conducted feed into the decision of whether or not to issue a target.

STEP BY STEP PROCEDURES

21. This section provides a more detailed explanation of the marine commercial vessel and crew/non-crew targeting officer work flow and the specific procedures used to make the decision to issue a target.

Advance Information

22. The PAN, crew list and non-crew list (if applicable) are supplied to the CBSA by the shipping agent or relevant trade chain partner a minimum of 96 hours prior to arrival, via facsimile or email.

23. The PAN data is manually entered into VATS by the JPO completing all relevant fields as per the training provided.
24. Conveyance reports are submitted electronically by the relevant trade chain partner and can be viewed by the targeting officer in TITAN-Marine for those vessels that are not exempt from Advance Commercial Information (ACI) requirements, in accordance with the time frames prescribed in the Reporting of Imported Goods Regulations.

Cursory Review

25. The JPO performs an initial review of the PAN information and the crew/non-crew lists to determine if there is any missing information or if additional information is required from the shipping agent or other relevant trade chain partner.
26. The JPO will request, by phone or email, further information from the shipping agent or other relevant trade chain partner if data is missing or if additional information is required for the targeting officer to perform a risk assessment.
27. The targeting officer performs an initial review of the PAN information that has been entered into VATS as well as the crew and non-crew (if applicable) lists to:
 - a. Identify national security risks; and
 - b. Identify risks associated with public safety priorities.
28. The targeting officer may also compare the PAN information with the conveyance report in TITAN Marine, if available.
29. If all risks have been negated after the cursory review, then no further action is required by the targeting officer.
30. Any high-risk vessel and crew/non-crew members that have been identified through the targeting officer's cursory review would be subjected to a comprehensive review.

Comprehensive Review

31. The targeting officer performs comprehensive reviews to confirm or negate risk posed to national security and/or public safety priorities.
32. All vessel and crew/non-crew undergoing a comprehensive review require mandatory system queries.

33. Suspected risks to national security and/or public safety priorities require the following **mandatory** system checks:
- a. IBQ;
 - b. CPIC;
 - c. INTERPOL;
 - d. GCMS;
 - e. MDA Watchkeeper;
 - f. VATS;
 - g. CSIS;
 - h. ICES;
 - i. IMS; and
 - j. TITAN-Marine;
34. The targeting officer may also query other databases and perform closed and open source searches of the internet to verify or negate the risk during the comprehensive review.
35. If an IMS query produces an active file result, the targeting officer will follow the instructions contained within the IMS file and contact the relevant intelligence officer or the NTC Targeting Intelligence to validate the IMS result.
36. If all risks have been negated after the comprehensive review, no further action is required by the targeting officer.

Consultations

37. Targeting officers may conduct or request consultations with internal and external CBSA partners, including embedded partners, prior to making a decision to issue a target.
38. Suspected risks to national security require the following **mandatory** consultations prior to issuing a target:
- a. Targeting Supervisor;
 - b. Targeting Intelligence;
 - c. RCMP and CSIS via S2 secure email; and
 - d. Marine Security Operations Centres (MSOC).
39. Depending upon the suspected inadmissibility risk, the targeting officer must follow the consultation processes outlined in the Immigration, Refugees and Citizenship Canada Enforcement Manual Chapter 2 (ENF2/OP 18):
- a. Security grounds (i.e. terrorism, espionage) under IRPA section A34:
 - i. Intelligence Operations and Analysis Division, Security Intelligence Unit, and

- ii. National Security Division at the CBSA, NHQ.
 - b. Violation of human or international rights under IRPA section A35:
 - i. CBSA Regional War Crimes Unit or the Modern War Crimes Section of the National Security Division at CBSA, NHQ.
 - c. Organized crime under IRPA section A37:
 - i. Organized Crime Section (RZTO) is a section of the National Security Division, CBSA, NHQ.
40. Suspected risks to public safety priorities may require the following consultations prior to issuing a target:
- a. Targeting Supervisor;
 - b. Targeting Intelligence;
 - c. CSIS;
 - d. CBSA OGD Program Unit;
 - e. MSOC; and
 - f. US CBP

Issuing the Target

41. If the suspected risk(s) associated with a vessel and crew/non-crew member(s) cannot be negated, the targeting officer must issue a target in VATS.
42. The targeting officer will provide detailed and relevant information about the vessel and any crew/non-crew member targeted; including the reason(s) for the target, indicators presented and any suggestions for the examining POE personnel.
- 43.

Notification and Follow-up

44. If the targeted vessel and crew/non-crew members are arriving at a non-automated POE, the following procedures are to occur:
- a. The targeting officer must notify the targeting supervisor of the impending target.
 - b. The targeting supervisor will:
 - i. Notify the appropriate POE and/or regional personnel by telephone or email that a target is inbound;
 - ii. Send the target information via email or secure fax (if available) to the appropriate POE;
 - iii. Confirm the POE is in receipt of the target; and
 - iv. Follow-up with the POE to ensure the exam results are communicated to the NTC, as soon as is operationally feasible. If

the target was not intercepted and/or examined, the POE is to provide valid reasons and justifications to the NTC.

45. If the POE personnel require further information concerning an issued target, they can contact the NTC targeting officers directly by phone at _____ or toll free at 1-855-682-1262; press 1 for English or 2 for French; press 1 for Targeting Operations Goods; press 1 for Marine; press 2 for Vessels. In an urgent or emergency situation, the POE personnel can contact the NTC Supervisors by phone at _____
46. Formal post-arrival and trend analysis will be conducted by the appropriate units within the NTC. Regional Intelligence units will forward any significant post-arrival intelligence from seizures and examinations to the NTC Targeting Intelligence.

CUSTOMS ENFORCEMENT MANUAL

Part 3

SELECTION

Chapter 2

TARGETING OBSCENITY AND HATE PROPAGANDA

2017/07/07

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to administer its responsibilities with respect to the identification and classification of prohibited material fairly and responsibly, in accordance with the provisions set out in the *Customs Act*, the *Customs Tariff*, the *Criminal Code* and the related court jurisprudence, while, at all times, respecting the principles and rights outlined in the *Canadian Charter of Rights and Freedoms*. For the purposes of this policy, prohibited material includes obscenity, hate propaganda, and goods of a treasonable or seditious nature.

AUTHORITIES

Customs Act

2. Section 58 – Authorizes designated CBSA officers to determine the tariff classification of imported goods at or before the time of accounting.
3. Section 98 – Stipulates that CBSA officers have the right to search any person who has arrived in Canada, or who is about to leave Canada, if the officer has reasonable grounds to suspect that the person has secreted on or about his person anything that would be considered contraband.
4. Section 99 – Stipulates that a CBSA officer has the right to examine goods by opening, or causing to be opened, any container or package and may take a reasonable amount as a sample.
5. Section 101 – Authorizes CBSA officers to detain goods which have been imported, or that are intended for export, until such time that the officers are satisfied that the goods have been dealt with in accordance with the *Customs Act* and any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods, and any regulations made there under.
6. Section 102 – Allows for an importer to export prohibited material.
7. Section 142 – Authorizes the disposal of prohibited material by CBSA officers in accordance with specific guidelines.

Customs Tariff

8. Section 136 – Stipulates that all goods enumerated or referred to in tariff item No. 9899.00.00 are prohibited entry into Canada.

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Targeting Obscenity and Hate Propaganda

9. Tariff item 9899.00.00 reads, in part: Books, printed paper, drawings, paintings, prints, photographs or representations of any kind that are deemed to be obscene under subsection 163(8) of the *Criminal Code*, constitute hate propaganda within the meaning of subsection 320(8) of the *Criminal Code*, that are of a treasonable character within the meaning of section 46 of the *Criminal Code*, and are of a seditious character within the meaning of sections 59 and 60 of the *Criminal Code*.

Criminal Code

10. Subsection 46(2) – States that, without lawful authority, it is a criminal offence for anyone to communicate or make available to an agent of a state other than Canada, military or scientific information or any sketch, plan, model, article, note or document of a military or scientific character that he knows or ought to know may be used by that state for a purpose prejudicial to the safety or defence of Canada (goods of a treasonable nature).
11. Paragraph 59(4)(b) and Subsection 61(b) – States that, without lawful authority, it is a criminal offence for anyone to publish or circulate any writing that advocates the use of force as a means of accomplishing a governmental change within Canada (goods of a seditious nature).
12. Subsection 163(8) – States that any publication, a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence, will be deemed obscene (obscenity).
13. Subsections 319(1) and 319(2) – States that it is a criminal offence for anyone to communicate statements, other than in private conversation, that incite hatred or wilfully promote hatred against any identifiable group (hate propaganda).
14. Subsection 320(8) – States that any writing, sign or visual representation that advocates or promotes genocide, or that promotes or incites hatred against an identifiable group, distinguished by colour, race, religion, national or ethnic origin, age, sex, gender identity or expression, or mental or physical disability, constitutes hate propaganda.

PURPOSE AND SCOPE

15. The purpose of this policy is to outline the CBSA's role in targeting suspect obscenity, hate propaganda and treasonable and seditious material, and to

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Targeting Obscenity and Hate Propaganda

provide guidelines for the use of CBSA officers, on identifying and examining these types of materials.

Note: Hereafter, any reference to hate propaganda is intended to include treasonable and seditious material.

16. The policies and procedures relating to the subsequent detention, determination and disposal of obscenity and hate propaganda are set out in Part 2, Chapter 8 (Obscenity and Hate Propaganda) of this manual.
17. Additional detail on obscenity is provided in Memorandum D9-1-1, while hate propaganda is addressed in Memorandum D9-1-15.
18. This policy applies to all employees of the CBSA and relates to both commercial and personal goods physically entering Canada through any means (e.g. postal, marine, air, land, rail).
19. The scope of this policy applies to material generated from all forms of media (e.g. audio, visual, written word, electronic) that is suspected of constituting prohibited material. Prohibited material can take many forms including personal or commercial literature, pamphlets, DVDs, videocassettes, audio recordings, compact disks, books, magazines, recordings, computer diskettes, CDs, books, magazines, and numerous other formats, including electronic material that is physically stored on laptop computers, hard drives, cellular telephones, digital cameras, media cards, USB keys, etc.

Note: The CBSA is authorized to deal only with the physical importation of goods and is not responsible for electronic or other non-physical transmissions.

20. This policy is outside the scope of the Targeting Policy and Procedures that are outlined in the EN Manual Part 3 Chapter 1.

BACKGROUND

21. In December 2000, in *Little Sisters Book and Art Emporium et al v. The Minister of Justice and the Minister of National Revenue*, the Supreme Court of Canada ruled that, while targeting is “not necessarily unconstitutional”, there must be sufficient evidence to support the practice of specific targeting. The court indicated that the prohibition of previous shipments addressed to a particular importer is not sufficient evidence to support targeting other shipments addressed to that same importer. The court also indicated that “targeting shipments that, on the basis of experience or other

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Targeting Obscenity and Hate Propaganda

information, are more likely than others to contain prohibited goods” is otherwise acceptable.

POLICY GUIDELINES

22. CBSA officers should not hesitate to contact the Prohibited Importations Unit (PIU), at _____ or by e-mail at _____ if they require assistance in targeting suspect obscenity or hate propaganda.
23. CBSA officers must use all available tools to properly target prohibited material, including the Technical Reference System (TRS), lookouts, bulletins and the related Memoranda D9-1-1 (obscenity), D9-1-15 (hate propaganda) and D9-1-17 (general procedures for handling obscenity and hate propaganda).
24. Electronic devices should be examined in accordance with policies, related to the examination of digital devices and media.

ROLES & RESPONSIBILITIES

Border Services Officers

25. BSOs are responsible for:
 - a) reading all related intelligence bulletins, alerts, notices, and other relevant publications, including Memoranda D9-1-1, D9-1-15, and D9-1-17 in a timely manner, in order to remain current with the lookouts and indicators relating to obscenity and hate propaganda;
 - b) selecting and examining shipments that appear to meet the definition of obscenity or hate propaganda as per tariff item 9899.00.00, or that are the subject of a lookout or that are selected randomly for examination; and
 - c) releasing, detaining or prohibiting the goods in accordance with the policies and procedures set out in Part 2, Chapter 8 (Obscenity and Hate Propaganda) of this manual and in Memorandum D9-1-17.

Intelligence Officers (IOs)

26. Intelligence Officers are responsible for:
 - a) assessing the validity and level of risk associated with current intelligence pertaining to importations of prohibited material;

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Targeting Obscenity and Hate Propaganda

- b) issuing regional lookouts for medium-risk to high-risk importations and for maintaining files that specifically show the link(s) to previous ruling(s) related to prohibited material, and/or current intelligence;
- c) re-evaluating importation lookouts in order to re-determine the level of risk, no less than every 90 days; and
- d) removing importation lookouts when the risk is no longer deemed to be medium to high.

Intelligence Analysts (IAs)

27. Intelligence Analysts are responsible for:

- a) setting importation targets in automated and/or manual systems for medium-risk to high-risk importations and for maintaining intelligence records;
- b) re-evaluating importation targets in order to re-determine the level of risk, no less than every 90 days; and
- c) removing importation targets when the risk is no longer deemed to be medium to high.

Headquarters – Enforcement and Intelligence Operations

28. Enforcement and Intelligence Operations is responsible for:

- a) maintaining up-to-date enforcement data;
- b) providing operational support and guidance to IOs and IAs;
- c) issuing national lookouts for medium-risk to high-risk importations and for maintaining intelligence files;
- d) liaising with and supporting the PIU in order to facilitate the identification of medium-risk to high-risk importations of obscenity and hate propaganda; and
- e) liaising with foreign customs and law enforcement agencies in order to facilitate the identification of medium-risk to high-risk producers and distributors of obscenity and hate propaganda.

Headquarters - Prohibited Importations Unit (PIU)

29. The Prohibited Importations Unit is responsible for:

- a) providing policies, procedures, advice and guidance to all CBSA staff on the practice of targeting obscenity and hate propaganda;
- b) updating the TRS database of all commercially reliable obscenity and hate propaganda classification decisions for reference, targeting and detention/determination purposes; and
- c) producing and distributing, within the CBSA, a Quarterly List of Known Exporters.

PROCEDURES

30. Effective targeting is an essential element in ensuring the identification of suspect obscenity and hate propaganda.

31. By applying appropriate targeting criteria and using a risk management approach during the examination of goods, CBSA officers will ensure accurate detentions.

32. Only relevant and up-to-date targeting criteria may be used to select importations for examination.

33. Material should only be targeted for closer examination, as suspect obscenity or hate propaganda, when it meets one or more of the following targeting criteria:

- a) The invoice description of the goods, and/or any other available documentation, describes the importation and gives an indication that the shipment may contain suspect material (e.g. titles that have been previously prohibited by the CBSA as obscenity or hate propaganda, works by authors, publishers or producers whose other works have been prohibited as obscenity or hate propaganda, etc.).
- b) The exporter is known to deal in obscenity or hate propaganda.
- c) The geographic origin of the exporter, production or publishing company is known in relation to obscenity or hate propaganda.
- d) There is specific information provided through CBSA Intelligence channels relating to the shipment.

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Targeting Obscenity and Hate Propaganda

- e) There is information known about the goods suggesting that it would lend itself to possible obscenity or hate propaganda.
- 34. The CBSA must not target importers in relation to suspect obscenity or hate propaganda. An importer's previous attempts at importing material that was ultimately prohibited as obscenity or hate propaganda, is not an approved targeting criterion.
- 35. The rate for referral for further examination will vary in accordance with the level of risk assigned to the importation.
- 36. The CBSA will maintain current data relating to the classification of obscenity and hate propaganda for reference and targeting purposes, including the TRS database and a Quarterly List of Known Exporters.
- 37. Random examinations generated by automated systems and examinations for verifying importer declarations are considered to be acceptable practices, as they complement a principled approach to targeting.

REFERENCES

- 38. *Customs Act*
Customs Tariff and its Schedule (Section XXI)
Criminal Code
Canadian Charter of Rights and Freedoms
Memorandum D9-1-1
Memorandum D9-1-15
Memorandum D9-1-17

CBSA ENFORCEMENT MANUAL

Part 3

SELECTION

Chapter 3

REPORTING, QUESTIONING, AND REFERRAL POLICY AND PROCEDURES

2017-10-04

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2017-10-04

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to analyze declaration reports and documentation, ask clarifying and direct questions, and refer persons and goods for further examination.

DEFINITIONS

2. Point of finality: For imported goods, the point of finality respecting a report or accounting is the point in time at which a transporter, importer, exporter, agent or traveller, having been given every reasonable opportunity to make a true and complete report or accounting, makes a report or accounting effectively asserting it to be true and complete. The same holds true for goods that are prohibited, controlled, or regulated by an Act of Parliament.

Note: For information concerning immigration “point of finality” (referred to as end of examination), referrals, and supplementary questioning, refer to Immigration, Refugees and Citizenship Canada (IRCC) [ENF 4 Port of Entry Examinations](#).

3. For additional definitions, refer to CBSA EN Manual Part 11 – Glossary.

AUTHORITIES

Customs Act

4. Section 7.1 – States that any information provided to an officer in the administration or enforcement of this Act, the *Customs Tariff* or the *Special Imports Measures Act* or under any other Act of Parliament that prohibits, controls, or regulates the importation or exportation of goods must be true, accurate, and complete.
5. Subsection 11(1) – States that all persons arriving in Canada shall enter only at a CBSA office designated for that purpose that is open for business and without delay, present themselves to an officer and answer truthfully any questions asked by an officer in the performance of his or her duties under the *Customs Act* or any other Act of Parliament.
6. Subsection 12(1) – States that all goods that are imported must be reported at the nearest CBSA office that is open for business except under certain circumstances or subject to prescribed conditions.

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Reporting, Questioning, and Referral

7. Under subsection 12(3), goods shall be reported:
 - (a) in the case of goods in the actual possession of a person arriving in Canada, or that form part of the person's baggage where the person and the person's baggage are being carried on board the same conveyance, by that person or, in prescribed circumstances, by the person in charge of the conveyance;
 - (a.1) in the case of goods imported by courier or as mail, by the person who exported the goods to Canada;
 - (b) in the case of goods, other than goods referred to in paragraph (a) or goods imported as mail, on board a conveyance arriving in Canada, by the person in charge of the conveyance; and
 - (c) in any other case, by the person on behalf of whom the goods are imported
8. Section 13 – States that every person who reports goods under section 12 or is stopped by an officer under section 99.1 shall:
 - (a) answer truthfully any question asked by an officer with respect to the goods; and
 - (b) if requested by an officer, present the goods, unload or open any part of the conveyance, and make the goods available for examination.
9. Section 32(1) – Requires the importer or owner to account for the goods and pay the applicable duties before the goods are released.

PURPOSE AND SCOPE

10. The purpose of this policy is to provide guidelines on reaching the point of finality; asking additional and direct questions to confirm or negate suspicion; and selecting and referring persons, goods, and conveyances for secondary examination.
11. This policy applies to all CBSA personnel.

POLICY GUIDELINES

Point of Finality

12. Before releasing or referring persons, goods, or conveyances for secondary examination, officers must reach the point of finality regarding a report or accounting.
13. In most circumstances, if the point of finality has not been reached before an examination, enforcement action taken as a result of a contravention or an offence under the *Customs Act* should not be taken because the transporter, importer, exporter, agent or traveller has not been given a reasonable opportunity to fulfill their reporting or accounting obligations.

Traveller Processing

14. Every person entering Canada is obligated to present themselves to the CBSA and to answer truthfully any questions asked by the officer in the performance of his or her duties under the *Customs Act* or any other Act of Parliament.
15. Persons are also required to make a report of all goods they are importing and to answer truthfully any question asked by an officer with respect to these goods.
16. Travellers are not obligated to answer questions which do not relate to their immigration status, to the goods in their possession, or to the lawful duties of the officer. Officers are authorized to ask questions they believe are relevant to the performance of their duties, including questions that, at times, may appear intrusive to the individual.
17. Before most enforcement action is taken, travellers must be given every reasonable opportunity to make a true and complete report of themselves and the goods they are importing. Once the officer is satisfied that this opportunity has been extended and no further report is forthcoming, the point of finality has been reached.
18. The point of finality is normally reached at primary unless alternate reporting methods are used.

Note: For information concerning point of finality when alternative reporting methods are used, refer to the People Processing Manual, Part 3 - Trusted Traveller Programs, chapter 1- General Information and the Standard Operating Procedures for Telephone Reporting Centre.

EN Part 3 Chapter 3

Reporting, Questioning, and Referral

19. Based on the person's report, once the point of finality is reached, the primary officer will decide whether the person may be released directly, must be referred for additional processing (e.g. examination/documentation of reported goods, payment of duties and taxes, etc.), or should be referred for further examination.
20. In some cases, it may not be possible for an officer to reach the point of finality at primary. The point of finality is not reached when there are language/communication problems or if an open or approximate declaration has been provided and the person is referred for examination without further confirmation or elaboration of their report. For example, if a person states that he or she is importing "about" \$250 worth of goods and the officer does not elaborate on the "about" aspect, an enforcement action may not be appropriate if the person subsequently presents receipts totalling \$400.
21. In instances when the point of finality has not been reached at primary, the traveller should be referred to secondary. The reason for referral must be communicated to the secondary officer as per local procedures, either verbally, by telephone or radio, or via the declaration card or referral slip. The secondary officer will take the necessary action to reach the point of finality.
22. Once the point of finality is reached, if a person is found to be in possession of unreported goods, or it is found that the report made was not truthful, enforcement action may be taken against the goods, the person, or both.
23. For the point of finality to be reached, it is not necessary to have a person sign or complete any document regarding their report.

Note: For further details on primary processing, refer to the [People Processing Manual, Part 2, Chapter 1 – Primary Questioning and Immigration Referrals](#).

Additional and Direct Questioning

24. Additional questions to those normally asked at primary and direct questioning techniques may be necessary to either confirm or negate an officer's suspicions.
25. Additional enquiries and direct questioning techniques should not be used as a matter of routine and must be conducted in accordance with the *Canadian Charter of Rights and Freedoms*, the *Canadian Human Rights Act*, the *Privacy Act*, the *Youth Criminal Justice Act*, and CBSA Code of Conduct.

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Reporting, Questioning, and Referral

26. If anomalies or indicators of non-compliance form suspicion during primary questioning, officers may ask additional questions to expand on answers received and clarify any irregularities.
27. When necessary to ask, these additional questions may relate, for example, to the purpose of their trip abroad if they are a returning Canadian resident; their occupation or employment status; whether they are travelling alone or with other people; or any other question relevant to the clarification of the indicators present.
28. Where possible, a primary officer's suspicions should be confirmed or negated at primary.
29. When reasonable suspicions are raised, direct questioning techniques can be utilized to confirm or negate these. Questions relating directly to any irregularities noticed by an officer can be asked as soon as they are observed. This technique allows the officer to observe the person's behaviour when responding. If a person is unable to answer any question that, in all likelihood, they should know the answer to, this, in itself, may be an indicator of non-compliance.
30. Officers will begin all direct questioning in a mildly intrusive manner. As the number of indicators increases and the officer's suspicions are confirmed, the intrusiveness of the direct questioning may be intensified.
31. Persons are not, under any circumstances, to be threatened with any form of legal sanction for refusing to answer additional or direct questions.
32. If an individual refuses to answer an additional or direct question, the officer should rephrase the question, move on to another question, or make a decision to allow the individual to continue through the customs process, refer them for additional processing, or refer them for examination based on reasonable suspicions.
33. When additional or direct questions are asked and an enforcement action occurs which results in prosecution of the individual, it will be necessary for the officer to be able to articulate his/her suspicions. To this end, officers must make precise notes of the questions asked of the traveller as well as the answers received. The exact wording of each question, the answer and/or the person's reaction should be noted where possible.
34. Direct questioning techniques may be used during any part of the customs process: primary, secondary, or while roving.

Minors

35. Persons under the age of eighteen will normally not be separated from a parent or guardian with whom they are travelling for questioning during the customs clearance process (e.g. removing the minor from the parent's presence for questioning concerning the adult's declaration.)

Referrals

36. When persons are referred from primary, it is imperative that the primary officer convey the information about the person's declaration and the reason for referral to the secondary officer. A declaration card or referral slip must be completed containing the following information:
- a) the number of persons questioned and their country of residence;
 - b) the dollar value(s) of the goods reported;
 - c) an approved referral code, which indicates the reason(s) for the referral and/or the suspicions of the officer; and
 - d) the initials, badge number or lane of the primary officer.
37. Referrals to secondary are made on a mandatory, selective, or random basis.
38. A **mandatory** referral is a decision that an officer makes for further documentation or examination whether it is for CBSA purposes or on behalf of other government departments/agencies. Mandatory referrals can be based on a specific lookout or target, an alert, or an automated system generated "hit". Examples of mandatory referrals are provided below:
- Referral to the general office and cashier for payment of duties and taxes on Forms BSF715 /BSF715-1- Casual Accounting Document;
 - Referral to the general office for completion of Form BSF186, *Personal Effects Accounting Document*, for goods imported by a settler, former resident, or seasonal resident, or as a bequest;
 - Referral to the secondary inspection area for immigration documentation (e.g., visitor record, work permit);
 - Referral due to the point of finality not being reached (e.g., a language/ communication problem or open declaration).
39. **Selective** referrals are made after reaching the point of finality because reasonable suspicions exist about the veracity of a person's report. These suspicions may arise as the result of the declaration or the indicators observed during primary questioning.

Note: Selective referrals may be made at primary or at any subsequent stage of processing (office, point, etc.) as long as the point of finality has been reached and reasonable suspicions exist. The suspicions must be conveyed to the secondary officer either verbally or on the declaration card/referral slip.

40. **Random** referrals, as the name implies, are conducted on a random basis to ensure compliance with all CBSA administered laws and regulations, as well as to gather statistics on compliance levels. Random referrals are normally system-generated. Nevertheless, at non-system equipped locations, such referrals will be based on a percentage of persons processed.

Note: For additional information on referral types and examinations, refer to the People Processing Manual, Part 10, Chapter 1- Referrals and Authorities for Examination and Search and EN Manual Part 4, Chapter 3 – Personal Baggage, Goods and Conveyance Policy and Procedures.

41. Secondary officers will explain the reason for referral to the traveller. Often, travellers are well aware of the reason for being referred to secondary, for example to pay duties and taxes on declared goods. In other cases, the officer will need to tell travellers why they have been referred and clarify any resulting confusion. For enforcement purposes (e. g. in the case of lookouts, contraband), the explanation may be limited to it is routine to verify their declaration.

Note: For information pertaining to situations in which a referral involves a person deemed to be of high-risk, refer to the CBSA Policy on the Use of Force and local high-risk standard operating procedures.

42. If a person referred to secondary attempts to leave a CBSA area without authorization before undergoing an examination, officers may stop him or her from leaving the area and may also arrest the individual for obstructing or hindering an officer in the performance of their duties under the *Customs Act*.

Note: For information on arrests, refer to EN Manual Part 6, Chapter 1 – Arrest and Detentions.

43. Officers will not pursue persons outside Customs Controlled Areas (CCA) or off CBSA property should they choose to flee on foot or in a conveyance. In these circumstances, officers will contact the police of jurisdiction as per local policy.

Commercial Processing

Point of Finality at Time of Report

44. Imported shipments must be reported by the person in charge of the conveyance carrying the goods.
45. With the exception of transporters operating under approved alternative cargo reporting procedures (e.g. Customs Self-Assessment (CSA) Program), the point of finality at the time of report is reached upon presentation to the CBSA of fully completed and acceptable cargo reporting documentation (e.g. cargo manifest).

Note: For information concerning cargo reporting, refer to the [Memoranda D3 Transportation Series](#).

46. If the documentation is insufficient or does not provide adequate information to reach the point of finality, it will be returned to the transporter for correction.
47. Examinations will only be performed after the cargo reporting documentation presented provides a clear point of finality.

Point of Finality at Time of Accounting for Release

48. In order to obtain the release of imported commercial goods, an importer or agent must make an interim or final accounting of the goods by presenting all required documents, properly completed, along with all applicable permits, certificates, or other supporting documents.

Note: For information concerning the accounting of commercial goods, refer to the [Memoranda D17 Accounting and Release Procedures Series](#).

49. With respect to accounting for release, the point of finality is reached when an officer, having reviewed and found the documents presented acceptable, has arrived at a point where a decision must be made to either release the shipment or refer it for examination.

Note: There may be situations where goods are released even though an accounting package does not meet all the documentation requirements and is being rejected. However, all the following conditions must exist before the release may be granted:

- a) the reason for rejection concerns matters not related to enforcement (e.g., coding or calculation errors); and

- b) the officer has already decided that an examination will not be required.

Referrals

- 50. After the point of finality has been reached, referrals for secondary examination are made on a mandatory, selective, or random basis.
- 51. A **mandatory** referral is a decision that an officer makes for further documentation or examination whether it is for CBSA purposes or on behalf of other government departments/agencies. Mandatory referrals can be based on a specific lookout or target, an alert, or an automated system generated "hit".
- 52. **Selective** referrals are made when reasonable suspicions exist about the veracity of a report or accounting.

 Note: Selective referrals may be made at primary or at any subsequent stage of processing, so long as the point of finality has been reached and reasonable suspicions exist.
- 53. **Random** referrals, as the name implies, are conducted on a random basis to ensure compliance with all CBSA administered laws and regulations, as well as to gather statistics on compliance levels. Random referrals are normally system-generated.
- 54. If an officer suspects that a shipment contains high-risk commodities, an examination must be conducted at the earliest time possible.

Note: For information concerning the escort of high-risk shipments or conveyances for examination, refer to CBSA [EN Manual Part 4, Chapter 4 – Commercial Shipment Examination](#).

ROLES AND RESPONSIBILITIES

CBSA Officers

- 55. CBSA officers are responsible for:
 - a) complying with this policy and procedures.
 - b) familiarizing themselves with current trends, *modus operandi*, concealment methods, unusual routings, etc. as they pertain to high-risk commodities and countries of origin to assist in identifying and referring high-risk persons, goods, shipments, and conveyances for examination.

CBSA Superintendents

56. CBSA superintendents are responsible for:

- a) ensuring compliance with this policy and procedures;
- b) providing necessary assistance and support to CBSA officers; and
- c) taking the necessary action when breaches of this policy and/or procedures occur.

Programs Branch

57. The Programs Branch is responsible for:

- a) developing, modifying, and approving policies in accordance with the interpretation and application of the *Customs Act*; and
- b) providing guidance to regional personnel.

REFERENCES

Customs Act
People Processing Manual

CUSTOMS ENFORCEMENT MANUAL

Part 3

SELECTION

Chapter 4

ROVING POLICY AND PROCEDURES

2017-11-08

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to conduct roving in order to administer the provisions set out in the *Customs Act (CA)*, *Immigration and Refugee Protection Act (IRPA)*, *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)*, and all other legislation that it administers.

DEFINITIONS

2. Refer to Part 11 - Glossary.

AUTHORITIES

3. All roving procedures must be conducted in accordance with the *Charter of Rights and Freedoms*, the *Canadian Human Rights Act (CHRA)*, the *Privacy Act*, the *Youth Criminal Justice Act* and the *CBSA Code of Conduct and the Values and Ethics Code for the Public Service*.
4. Under the CHRA, it is against the law to discriminate on the basis of 11 grounds: race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, mental or physical disability and pardoned conviction.

Customs Act

5. Section 11 – Requires every person arriving in Canada to report to the CBSA and to answer truthfully any questions asked by an officer in the performance of his or her duties under this Act or any other Act of Parliament.
6. Section 13 – Requires every person reporting goods under section 12, to present goods to the officer and answer truthfully any question asked by the officer with respect to the goods.

Immigration and Refugee Protection Act

7. 15(1) - An officer is authorized to proceed with an examination if a person makes an application to the officer in accordance with this Act or if an application is made under subsection 11(1.01).
8. 15(3) – Allows an officer the authority to board and inspect a vehicle and to examine and record documents carried by a person on board a vehicle.

EN Part 3 Chapter 4

Roving

Proceeds of Crime (Money Laundering) and Terrorist Financing Act

9. Part 2 – Provides the authority for the Canada Border Services Agency to administer and enforce this part of the Act.
10. Section 12(1) – Provides the obligation to report to a Border Services Officer the cross-border movement of currency and monetary instruments of a value equal to or greater than a determined threshold.
11. Section 12(4) – Provides the obligation to answer truthfully any questions asked by the officer in the performance of the officer's duties under Part 2 and to present currency or monetary instruments for examination.

Cross-Border Currency and Monetary Instrument Reporting Regulations

12. Establishes the threshold amount for currency reporting at CAN \$10, 000 or its equivalent after conversion, the general manner of reporting, retention, the prescribed amount of penalties, and administrative details.

PURPOSE AND SCOPE

13. The purpose of this policy is to provide guidelines to officers on roving activities in the air and land modes.
14. This policy applies to all CBSA personnel enforcing the CA, IRPA and the PCMLTFA while conducting the roving function.

BACKGROUND

15. Roving is one of the fundamental components of the CBSA enforcement program. Originally conceived to help identify drug couriers, it now forms one third of our traveller screening and examination program, which includes primary, secondary, and roving.
16. The roving function is also a vital component of the Primary Inspection Kiosk or the Automated Border Clearance Kiosk operational model in order to provide a valuable risk-mitigation process that directly supports program integrity and improves border security.
17. The CBSA's aim is to improve the quality of referrals as well as the quality of examinations in order to enhance enforcement activities. This is achieved, in part, through the application of roving techniques and skills.

POLICY GUIDELINES

General

18. Roving is to be carried out strictly for the purposes of enforcement operations in accordance with these policies and procedures.
19. Roving includes the following activities:
 - identifying individuals who may be inadmissible to Canada and/or involved in the unlawful importation/exportation of goods, particularly those that are prohibited, controlled or regulated in Canada.
 - interview and conduct documentation review, behaviour and observational analysis on as many travellers as possible.
 - looking for visual indicators, such as nervous or suspicious behaviour exhibited by travellers or identifying any abnormalities or potential modifications to vehicles or baggage.
20. The roving officer is not intended to select for examination those travellers who have already been targeted for examination by PIL. This should not preclude the flexibility to assign rovers to intercept travellers who are considered “high risk” or “subject of interest”.
21. All interactions must begin with a greeting and the rovers must identify themselves to the traveller.
22. Additional questions may be used to establish preliminary information such as identification and travel information. Officers may use direct questioning to gain information in an effort to confirm or negate indicators observed in any CBSA area, including CCAs.

Note: Travellers are under no obligation to answer any questions that do not pertain to their goods, their currency or monetary instruments or their admissibility into Canada.
23. There are a number of *Criminal Code* offences an officer may encounter while conducting roving activities. Officers cannot use their authorities under the *Customs Act* for the sole purpose of searching for *Criminal Code* offences (i.e. impaired driving)
24. A minimum of two officers is recommended to conduct roving activities unless other officers are within reasonable proximity to provide the availability of backup or support.

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Roving

25. Officers engaged in roving must be equipped with a CBSA issued communications device to ensure communication capability with other port officers including Superintendents.
26. Officers conducting roving activities must adhere to CBSA Uniform Policy and Standards of Appearance and comply with section 8.29 of the CBSA Directive on Agency Firearms and Defensive Equipment.
27. Roving under the PCMLTFA can also be conducted on export.
28. Detector Dog Handlers are available for and expected to assist with roving activities where operationally feasible.
29. While it is highly recommended that an officer carrying out the roving function should have completed the roving training, completion of the course is not required to engage in roving activity.
30. Officer trainees may be used to conduct roving duties with the following conditions:
 - a) must have completed a minimum of 6 months of OID Program;
 - b) must have received a positive assessment in the 6 month Trainee Performance Questionnaire with a recommendation indicating that the officer trainee is ready to start doing roving functions;
 - c) not be under an enhanced development plan within the OID Program; and
 - d) must have completed the national roving training course.

Team Roving

31. Designate who will be the rover(s) and who will be the spotter(s).

Rover

32. Conduct a threat assessment on conveyances (flights, trucks, etc) based on current trends, conveyance information, documentation and/or information provided by the National Targeting Centre (NTC).
33. Conduct a visual threat assessment of passengers, conveyances and goods, where possible, as they arrive.
34. Select individuals to question or refer for secondary examination based on suspicions raised through observation.

35. Approach selected individuals and identify oneself as an officer of the CBSA.
36. Greet travellers and use this opportunity to observe the individuals verbal and non-verbal behaviour.
37. Ask to see and review any pertinent identification, declaration and/or travel documents.
38. Begin questioning in a less-intrusive manner by asking additional questions pertaining to matters such as their travel, identification, declaration and employment and increase intensity of questioning proportionate to any indicators discovered.
39. Compare answers given to the documentation provided.
40. Progress to a secondary level of examination with more-intrusive questioning by applying direct questioning techniques when sufficient indicators exist (i.e. verbal and non-verbal, documentation, itinerary) and/or your suspicions have not been denied.

Note: Refer to Enforcement Manual, Pt. 3, Ch. 3, Reporting, Questioning and Referral, for policies and procedures pertaining to additional and direct questioning.

41. Whenever possible, personally conduct the secondary examination of any individual(s) you have referred, or communicate specifics of referral to secondary.

Note: Exceptions may be made if a rover has referred more than one subject and it is not believed that they are travelling together. If this occurs, refer subsequent examinations to another rover or secondary officer.

42. Observe referred individuals as closely as possible to ensure that they do not attempt to destroy or dispose of any evidence if you continue to rove while the person collects luggage or moves into a line.
43. Immediately arrest individuals who admit to attempting to smuggle contraband, advise them of the reason of the arrest and their right to retain and instruct counsel, and caution them against making any incriminating statements as per *The Charter of Rights and Freedoms* section 10.
44. Escort arrested individuals to the secondary area and provide them with immediate access to a telephone if they have asked to contact counsel.

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Roving

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

45. Record all pertinent facts in the CE-1 Customs Notebook, including but not limited to:
 - a) suspicious activities;
 - b) verbal and non-verbal indicators;
 - c) questions posed and their answers; and
 - d) times of detention, arrest, advisements, and cautions.
46. Detector Dog Handler as Rover - Initiate the reward process and divert the dog's attention if the dog indicates on an individual. Advise the spotter either through pre-established signals or by radio.

Spotter

47. Observe all interactions between the rover and the individual(s) for officer safety purposes and to watch for the individual(s) non-verbal reactions.
48. Upon observing an indicator(s) that suggests potential illegal activity, the spotter prompts the other members of the roving unit to approach the traveller to conduct an interview to either confirm or negate potential risk.
49. Communicate any suspicious activities to the roving officer by a two-way communication device or in person, ensuring the individual(s) involved cannot overhear the communication.
50. Spotter for Detector Dog Handler – take over roving duties and assume control of the individual(s) for further questioning at this point.

Note: Refer to the **Detector Dog Service Manual** or contact the **Detector Dog Service Inbox** for additional information on the use of Detector Dogs in roving.

Roving in Air Mode

51. In the air mode, roving may be conducted in any area used for the international arrival or departure of people and/or goods (i.e. pre- Primary Inspection Line (PIL), post PIL, in the secondary examination area, around baggage carousels, etc.), including CCAs.

52. All officers engaging in pre-PIL roving activities should avoid conducting primary questioning on travellers. Pre-PIL roving for the purpose of discovering offences under the *Customs Act* should be limited to identify possible non-compliance pertaining to contraband.
53. For policy on roving activities for the purpose of discovering offences under the IRPA, refer to Chapter 22 of the ENF 4 Port of entry examinations.
54. CBSA officers working in CCAs are able to question individuals, including workers, on their reasons for being present in the CCA, and to conduct non-intrusive examinations (such as x-ray) of goods in their possession. The officers will need to have reasonable grounds to carry out further examination of goods or searches of individuals.
55. Other than individuals required to present themselves under section 11 or to report goods under section 12 of the *Customs Act*, all individuals within or exiting a CCA are subject to the CCA legislation or regulations.

Note: For guidelines, refer to the EN Manual Part 6, Chapter 9 on *Customs Controlled Areas*.

56. For the purposes of administering the PCMLTFA, CBSA officers may question persons regarding the possession of currency or monetary instruments in accordance with their authorities under the PCMLTFA. When questioning travellers upon exiting Canada by air, officers should be aware of the establish point of finality for the reporting of currency and monetary instruments.
57. At any point up to the ramp (jetway), an officer may establish point of finality through questioning. Once a traveller makes a declaration (including a nil declaration), the point of finality for the reporting of currency or monetary instruments is met.
58. Travellers who have checked-in at the gate and are at the ramp (jetway) prior to boarding the plane have passed the point of finality to report. Officers should not accept a verbal declaration past that point.

Note: For more information, refer to the EN Manual Part 2, Chapter 2 *Cross-Border Currency and Monetary Instruments Reporting Policy and Procedures*.

59. All referrals made to secondary from roving will not be reflected in the Secondary Referral List in Integrated Customs Systems-Secondary Processing (ICS-SP). As a result, the rover or the officer performing the secondary examination must add a secondary referral by creating an entry through the use of the ICS-SP passage history application.

60. Once a secondary referral entry has been created, the rover or the officer performing the secondary examination must enter examination results in ICS-SP for every passenger they have selected for secondary regardless of whether the examination is resultant or not.

Note: For guidelines, refer to the EN Manual Part 4 Chapter 15 for *Traveller Examination Results Recording*.

61. In the event of a detector dog indication during roving activities, the detector dog handler will initiate the reward process and advise the spotter. The spotter will take on the role of questioning the traveller while the dog is rewarded.

Roving in Land Mode

62. In the land mode, pre-PIL roving activities for *Customs Act* and *IRPA* can only occur once a traveller has crossed the international border into Canada. Officers at ports of entry must be aware of the geographical layout of their port to ensure that any pre-PIL roving activities are conducted only on those travellers actually in Canada.

63. Pre-PIL **roving will not be conducted** on high-speed portions of highways, within the confines of international bridges/tunnels/rail crossings or any areas not within direct sight and shouting range of PIL officers.

Note: Officer(s) should ensure the vehicle (and surrounding traffic) does not impede or compromise officer safety or ability to engage the individual.

64. All officers engaging in pre-PIL roving activities in land mode must wear **high-visibility vests** over the outermost layer of their uniform.
65. **Officers should avoid conducting primary questioning on travellers.** Travellers engaged in questioning by the roving officers should be advised that they will be required to respond to primary questioning at the PIL booth.
66. All PIL officers must be informed that roving is taking place and all roving officers must be equipped with a communications device to ensure communication capability with other port officers, including those in plain clothes and Superintendents.
67. While detector dogs can perform sweeps of vehicles pre-PIL, this activity can be exhausting to the dog due to the heat/cold and emissions coming from vehicles. Officers should be aware of the hazards associated with moving vehicles and exhaust fumes. The handler must ensure the health and safety of the dog.

68. An officer must accompany the detector dog team on any vehicle sweeps to ensure the team's safety. If possible, the officer or handler should request drivers turn off their engines while the dog and handler are sweeping the vehicle.

ROLES AND RESPONSIBILITIES

Roving Officers

69. Roving officers are responsible for:

- a) being cognizant of current intelligence (trends and lookouts) to determine, based on risk, where to concentrate roving efforts;
- b) visually screening travellers and conveyances, through real-time observation and risk assessment, to detect indicators that expose threat(s) and/or risk(s);
- c) using additional questions to those normally asked at primary and direct questioning technique that may be necessary to either confirm or negate suspicions.

Note: refer to EN manual Pt. 3 Ch. 3 Reporting, Questioning and Referral Policies and Procedures for information pertaining to additional and direct questioning;

- d) completing reports when necessary.

Note: refer to Agency Notebook Policy, Pt. 8 Ch. 1.

Chiefs and Superintendents

70. Chiefs and superintendents are responsible for:

- a) ensuring compliance with this policy and procedures;
- b) selecting and scheduling officers for participation in the national roving training;
- c) providing on-the-job training, where possible, to any officers engaged in roving, where formal training has not been conducted.

REFERENCES

71. *Customs Act*
Immigration and Refugee Protection Act
Proceeds of Crime (Money Laundering) and Terrorist Financing Act
Canadian Charter of Rights and Freedoms
Canadian Human Rights Act
Privacy Act
Youth Criminal Justice Act
Canada Labour Code Part II, Canada Occupational Health and Safety
Regulations Part XII
Detector Dog Service Manual

ENFORCEMENT MANUAL

Part 3

SELECTION

Chapter 5

ADVANCE PASSENGER INFORMATION/PASSENGER NAME RECORD (API/PNR) and PASSENGER INFORMATION SYSTEM (PAXIS) POLICY AND PROCEDURES

20/10/08

Part 3 Chapter 5

API/PNR and PAXIS

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POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to require Advance Passenger Information (API) / Passenger Name Record (PNR) data from carriers on persons seeking entry into Canada. This data is used to identify persons who are or may be involved with, or connected to, terrorism, terrorism-related crimes, or other serious crimes, including organized crime.
2. Commercial carriers and charterers carrying persons or goods into Canada or travel agents and owners and operators of a reservation system are required to provide specific information about all persons on board a commercial conveyance prior to the arrival of that conveyance in Canada.

DEFINITIONS

3. Refer to "Glossary".

AUTHORITIES

Customs Act

4. Section 107.1(1) prescribes circumstances and conditions, that requires commercial carriers, charterers, travel agents, and owners and operators of a reservation system to provide, or provide access to, specific information about any person on board a conveyance in advance of the arrival of the conveyance in Canada or within a reasonable time after that arrival.
5. Section 107.1(2) stipulates that any person who is required under subsection (1) to provide, or provide access to, prescribed information shall do so despite any restriction under the *Aeronautics Act* on the disclosure of such information.

Passenger Information (Customs) Regulations

6. The *Passenger Information (Customs) Regulations* prescribe who is required to provide, or provide access to, specific information. They outline the specific information that is required and indicate the format in which the information is to be provided.

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7. Prescribed classes of persons:
 - a) commercial carriers and charterers who undertake to carry persons or goods to Canada and the representatives of those carriers and charterers;
 - b) travel agents; and
 - c) owners and operators of a reservation system.
8. Prescribed Information:
 - a) their surname, first name and any middle names;
 - b) their date of birth;
 - c) their gender;
 - d) their citizenship or nationality;
 - e) the type of travel document that identifies them, the name of the country in which the travel document was issued and the number on the travel document;
 - f) their reservation record locator number, if any, and in the case of a person in charge of the commercial conveyance or any other crew member without a reservation record locator number, notification of their status as a crew member; and
 - g) the information relating to the person in a reservation system.
9. Prescribed Conditions:
 - a) Manifest: If required, commercial carriers, charterers, travel agents, and owners and operators of a reservation system, will provide specific information referred to in paragraph 6(a) to (f) in the form of a manifest to a Minister's representative at the time of departure of the commercial conveyance from the last place the person boarded the conveyance before arriving in Canada.
 - b) Reservation system: If required, commercial carriers, charterers, travel agents, and owners and operators of a reservation system will provide to a Minister's representative the information as prescribed in paragraph 6(g), or provide a Minister's representative access to their reservation system.

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- c) Electronic or non-electronic format: If required, commercial carriers, charterers, travel agents, and owners and operators of a reservation system will provide or provide access to specific information referred in paragraph 6:
 - (i) when the member maintains the information in an electronic format, that the member provide, or provide access to, as the case may be, the information in the electronic format; and
 - (ii) when the member does not maintain the information in an electronic format, the member provides copies of the information or provides access to the written information, as the case may be.

Immigration and Refugee Protection Act (IRPA)

- 10. Section 148(1)(d) requires transportation companies to provide prescribed information, including documents and reports.
- 11. Section 149(1)(d) notes that the information prescribed in Section 148(1)(d) may only be used for the purposes of the Act or the Department of Citizenship and Immigration Act or to identify a person for whom a warrant of arrest has been issued in Canada; and that notice regarding the use of the information must be given to the person to whom it relates.
- 12. Section 150.1 provides authority for regulations to provide for any matter relating to the collection, retention, use, disclosure and disposal of information for the purposes of this Act or for the purposes of program legislation as defined in section 2 of the Canada Border Services Agency Act; and for the disclosure of information for the purposes of national security, the defence of Canada or the conduct of international affairs, including the implementation of an agreement entered into under section 5 of the Department of Citizenship and Immigration Act or section 13 of the Canada Border Services Agency Act.

Immigration and Refugee Protection Regulations

- 13. Section 269 requires that commercial transporters provide API and PNR information upon request.

Protection of Passenger Information Regulations (PPIR)

- 14. Specify that CBSA shall not for the purposes of the Act, retain, provide access to or disclose API/PNR other than in accordance with these regulations.

PURPOSE AND SCOPE

15. The purpose of this document is to provide guidelines for the acquisition, use and retention of API/PNR data, as well as the use of the Passenger Information System (PAXIS). This policy applies to all officers who are authorized to view and use API/PNR data including those officers who are authorized to access the PAXIS.
16. This policy applies to the air mode as specified in *Customs Notice N-472*. For all other modes of transportation, the date on which the Minister will require the API/PNR data be provided in accordance with the regulations will be announced prior to implementation.

BACKGROUND

17. In November 2001, changes to the *Customs Act* obligated commercial carriers, charterers and/or their agents, travel agents, and owners and operators of a reservation system to provide specific information for all persons being transported to Canada from foreign points of origin. The commercial carriers, charterers and/or their agents must also provide access to the passenger information contained in their reservation systems. Provision of, and access to this data allows the officers to review information on persons entering Canada prior to arrival.
18. The *Passenger Information (Customs) Regulation* made under section 107.1 of the *Customs Act* came into effect October 4, 2002, through the use of the retroactive regulation – making authority in paragraph 167.1(b) of the *Act* and the issuance of Customs Notice N-472. The regulations have since been approved and were published in the *Canada Gazette, Part II* on July 2, 2003.
19. The API/PNR program focuses on the identification of high-risk travellers and the development of risk indicators. This information will also aid in identifying the new, emerging and constantly changing travel patterns of high-risk travellers. It will allow the CBSA to manage risk on a proactive basis.

POLICY GUIDELINES

Advance Passenger Information

20. API consists of data identifying a person, including their surname, first name and any middle names, date of birth, gender, citizenship or nationality, travel document type that identifies them, and the number and country of issue of the travel document. This data will be made available to CBSA by the commercial carrier upon departure to Canada from a foreign point of origin.
21. Commercial carriers, charterers or their agents are responsible for the electronic transmission of API data in the current acceptable format.
22. The transmission of API data should occur at the time the commercial conveyance departs the foreign point of origin for Canada.
23. The review of API data assists in identifying persons who pose a known risk.
24. All authorized CBSA officers will have unrestricted access to API data for three years and six months from the date of receipt.
25. API data electronically collected by the CBSA is retained for a period of three years and six months.
26. API data received in the region through other means must be retained for a period of two years for Access to Information and Privacy (ATIP) purposes.

Passenger Name Record

27. PNR is data regarding a person's reservation and travel itinerary contained in commercial carriers' reservation systems.
28. The CBSA is not authorized to collect the entire PNR. Certain data such as meal and health information will be purged upon receipt.
29. Commercial carriers, charterers or their agents are responsible for the electronic transmission of PNR data in the current acceptable format.
30. The CBSA will automatically collect the PNR data once the API data is transmitted.

Note: Reservation systems vary between air carriers, therefore available data will differ from each reservation system.

Note: Refer to Appendix A for the list of potential PNR data elements.

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31. The review of PNR data allows authorized CBSA officers to assess the unknown risk of travellers.
32. Access by authorized CBSA officers to PNR data is restricted.

Note: Please refer to Appendix B for the list of authorized CBSA officers and the access timeframes.
33. PNR data is retained for a period of three years and six months from the date of receipt.
34. PNR data received in the region through other means must be retained for a period of two years for ATIP purposes.
35. All collected PNR data will be available for viewing from the time of receipt up to 72 hours.
36. The period after 72 hours to the end of two years from the receipt of PNR data will involve the post-arrival analysis of data. Access to the PNR data will be limited to authorized intelligence officers and intelligence analysts. During this timeframe, the persons name is not available for viewing unless an authorized user enters a justification. Analysts will only use and access information that does not include the persons name (no-name PNR).
37. For the period from the end of two years to the end of three years and six months, the PNR data will be reviewed and manipulated to identify links, patterns or trends. Access to this data will be restricted intelligence analysts. The accessible information will not contain any personal data that would identify a specific person (de-personalized PNR). All PNR data will only be re-personalized under exceptional circumstances where the President of the CBSA believes on reasonable grounds that there is a real or perceived threat to the security or defence of Canada.

Passenger Information System (PAXIS)

38. The PAXIS is a secure system used by authorized CBSA officers to review of API/PNR data related to persons scheduled to arrive in Canada. The PAXIS provides access to API/PNR data to support the targeting and analysis function.
39. Access to the PAXIS is controlled by user profile, user identification (ID) and password. User profiles restrict access to specific functions and are based on the work description of the user.
40. PAXIS users must complete the PAXIS training prior to receiving access to the system.

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41. PAXIS users are responsible for all transactions completed using their user ID and password. All transactions are audited and show the relationship between the user, data, and activity date/time. The owner of the user ID is liable for any misuse or compromise of the system and data contained in its databases.
42. The PAXIS is a CBSA system and is therefore under the guidelines of the *CCRA Electronic Networks Policy* and any breach will be dealt with according to applicable discipline policies.
43. The Integrated Customs System (ICS) Administrative Maintenance Unit will administer user maintenance for the PAXIS upon request from the API/PNR systems section. Any changes due to transfer, promotion, change in duties, or termination of employment must be communicated to paxissupport@cbsa-asfc.gc.ca (CBSA/ASFC-Dist, PAXIS-SIPAX) as soon as possible.

Note: The API/PNR systems section, of the Innovation Science and Technology Branch, monitors the PAXIS Support e-mail.

44. As a commitment to the Privacy Commissioner of Canada to safeguard the privacy rights of individuals, the PAXIS usage is monitored on a regular basis by the API/PNR systems section.
45. Any user who has not accessed the PAXIS over the course of a two-month period will have their privileges suspended by the API/PNR systems section. Access will only be reinstated once written justification from an immediate supervisor is submitted to the API/PNR systems section. It is imperative that individual use of the application is monitored and that the user group is kept to a minimum.

Protection of Data

46. The PAXIS and the data contained therein, as well as any API/PNR data received manually are classified as "Protected B".
47. The circumstances under which API/PNR data can be disclosed to third parties or outside agencies is restricted.

Note: API/PNR data contains personal and sensitive information for which a person would have a high expectation of privacy. This data is therefore protected under the *Privacy Act* and the *Canadian Charter of Rights and Freedoms* (the *Charter*).

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API/PNR and PAXIS

48. API/PNR data is considered CBSA information as defined in subsection 107(1) of the *Customs Act*.

Note: Refer to the *Customs Act* and to Memorandum D1-16-1 *Explanation of Section 107 of the Customs Act*. The interim guidelines for the disclosure of CBSA information is provided for by Memorandum D1-16-2 *Interim Administrative Guidelines for the Provision to others, Allowing access to others, and Use of Customs Information*. In addition when considering the disclosure of PNR data the guidelines provided for by Memorandum D1-16-3 *Administrative Guidelines for the Provision to others, Allowing access to others and Use of Passenger Name Record (PNR) Data* must be adhered to.

49. All API and PNR data that is received in the regions through means other than the PAXIS is to be stored in a secure area with controlled access.

ROLES AND RESPONSIBILITIES

REGIONAL OPERATIONS

CBSA Officers

50. CBSA (targeting) officers assigned to Passenger Targeting Units (PTU's) are responsible for:
- a) complying with this policy and any other CBSA policies relevant to the API/PNR program;
 - b) accessing the PAXIS to develop targets for high-risk travellers entering Canada so that an examination, verification or investigation can be conducted;
 - c) consulting with supervisors and intelligence personnel and seeking advice and guidance in support of day-to-day activities; and
 - d) retrieving API/PNR data related to a seizure or enforcement action.

CBSA Superintendents

51. CBSA superintendents and/or chiefs assigned to PTU's or Intelligence sections are responsible for:
- a) ensuring compliance with this policy and any other CBSA policies relevant to the API/PNR program;

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- b) taking appropriate corrective action on any policy or security breaches;
- c) providing advice and guidance to targeting officers working under their direction with respect to the application of this policy;
- d) consulting with regional and/or headquarters officials and seeking advice and guidance, as required; and
- e) providing feedback and making recommendations to the program area responsible for these guidelines on the administration/application of these guidelines.

Regional Intelligence Officers

52. Regional intelligence officers (RIOs) are responsible for:

- a) complying with this policy and any other CBSA policies relevant to the API/PNR program;
- b) providing support and guidance to regional operations, intelligence and enforcement efforts;
- c) collecting, evaluating, and disseminating tactical, operational and strategic intelligence data received through the PAXIS to the field; and
- d) consulting with supervisors and/or headquarters officials and seeking guidance as required.

Regional Intelligence Analysts

53. Regional intelligence analysts (RIAs) are responsible for:

- a) complying with this policy and any other CBSA policies relevant to the API/PNR program;
- b) providing support and guidance to regional operations and enforcement efforts;
- c) analyzing tactical, operational and strategic intelligence data received through the PAXIS for short and long-term trend analysis;
- d) preparing intelligence reports on trend analysis; and
- e) consulting with supervisors and/or headquarters officials and seeking advice and guidance as required.

Part 3 Chapter 5

API/PNR and PAXIS

HEADQUARTERS OPERATIONS

Senior program/project officers

54. The senior program/project officer for API/PNR is responsible for:
- a) ensuring compliance with this policy and any other CBSA policies relevant to the API/PNR program;
 - b) assessing an Administrative Monetary Penalty for non-compliance with the requirement to provide, or provide access, to API/PNR data
 - c) providing support and functional guidance to regional operations and headquarters;
 - d) consulting with the Innovation Science and Technology Branch and service providers concerning the PAXIS;
 - e) consulting with commercial carriers to ensure compliance and functionality with respect to program requirements and the PAXIS;
 - f) monitoring and maintaining the PAXIS usage and operations;
 - g) providing system changes and updates to end-users of the PAXIS; and
 - h) consulting with supervisors and/or headquarters officials and seeking advice and guidance as required.
55. The senior program officer for Intelligence Development and Field Support, Intelligence Directorate, is responsible for:
- a) complying with this policy and any other CBSA policies relevant to the API/PNR program;
 - b) providing support and guidance to regional operations, intelligence and enforcement efforts;
 - c) collecting, evaluating, and disseminating tactical, operational and strategic intelligence data received through the PAXIS;
 - d) consulting with supervisors and/or headquarters officials and seeking advice and guidance as required; and
 - e) liaising with the United States Customs and Border Protection (USCBP) concerning data received through the PAXIS.

Part 3 Chapter 5

API/PNR and PAXIS

Senior intelligence analysts

56. Senior intelligence analysts (SIAs), Intelligence Directorate, are responsible for:
- a) complying with this policy and any other CBSA policies relevant to the API/PNR program;
 - b) providing field support and guidance to regional operations and enforcement efforts;
 - c) analyzing tactical, operational and strategic intelligence data received through the PAXIS for short and long-term trend analysis;
 - d) preparing intelligence reports on trend analysis; and
 - e) consulting with supervisors or headquarters officials and seeking advice and guidance as required.

Managers

57. Manager, Contraband Programs, Border Enforcement Division, Enforcement Directorate, is responsible for:
- a) developing, modifying, and approving all policies related to the use of the PAXIS, user access, its databanks, files and records and outside system interfaces;
 - b) approving additional system functionality and expansion; and
 - c) ensuring the processes and policies of other directorates, divisions and departments are adhered to in the development, implementation and operation of the API/PNR program.
58. The managers of the National Risk Assessment Centre are responsible for:
- a) ensuring compliance with this policy and any other CBSA policies relevant to the API/PNR program;
 - b) providing advice and guidance to officers working under their direction with respect to the application of these guidelines;
 - c) consulting with regional or headquarters officials and providing advice and guidance, as required; and

Part 3 Chapter 5

API/PNR and PAXIS

- d) providing feedback and making recommendations to the program area responsible for these guidelines on the administration/application of these guidelines.

Director, Borders Intelligence Division

59. The Director, Borders Intelligence Division, Intelligence Directorate, is responsible for:

- a) ensuring compliance with this policy and any other CBSA policies relevant to the API/PNR program;
- b) providing advice and guidance to headquarters intelligence units working under their direction with respect to the application of these guidelines;
- c) consulting with regional or headquarters officials and providing advice and guidance, as required;
- d) authorizing the disclosure of PNR data; and
- e) providing feedback and making recommendations to the responsible program area responsible on the administration/application of these guidelines.

Security Directorate

60. The Security Directorate is responsible for:

- a) advising the Director General of the Intelligence Directorate on operational and policy matters relating to the security of the PAXIS and its data.

PROCEDURES

61. For procedures on the use of the PAXIS please refer to the *PAXIS Learners Guide*. For procedures on the disclosure of API/PNR data please refer to *Memorandum D1-16-2 - Interim Administrative Guidelines for the Provision to others, Allowing Access to Others and Use of Customs Information* and *Memorandum D1-16-3 - Administrative Guidelines for the Provision to others, Allowing access to others and Use of Passenger Name Record (PNR) data*, refers to the disclosure of PNR data.

REFERENCES

62. Access to Information Act
Air Passenger Contraband Targeting Program Guide
CBSA Comptrollership Manual, Security Volume
CCRA Electronic Networks Policy Guidelines
Customs Act
Enforcement Manual
Government of Canada Technical Security Standards for Information Technology
Immigration and Refugee Protection Act
Immigration and Refugee Protection Regulations
Logging and Monitoring of Employee Access to Client Data Bulletin No. s/s-97-021
Memorandum D1-16-1 Explanation of Section 107 of the Customs Act
Memorandum D1-16-2 Interim Administrative Guidelines for the Provision to others, Allowing access to others, and Use of Customs Information
Memorandum D1-16-3 Administrative Guidelines for the Provision to others, Allowing access to others and Use of Passenger Name Record (PNR) Data
PAXIS Learners Guide
Library and Archives of Canada Act
Passenger Information (Customs) Regulations
Personal Information and Documentation Protection Act
Protection of Passenger Information Regulations
Privacy Act

RESPONSIBLE OFFICE

Office of Primary Interest: **Borders Enforcement Division**

Part 3

SELECTION

Chapter 5

ADVANCE PASSENGER INFORMATION/PASSENGER NAME RECORD (API/PNR) and PASSENGER INFORMATION SYSTEM (PAXIS) POLICY AND PROCEDURES

Appendix A

POTENTIAL PASSENGER NAME RECORD DATA ELEMENTS

20/10/08

APPENDIX A: POTENTIAL PASSENGER NAME RECORD (PNR) DATA ELEMENTS

Not all PNR data elements listed below are provided to the CBSA by all air carriers. Currently, air carriers are only mandated to provide the CBSA the data elements that they record for their own purposes.

PNR data elements currently available for targeting:

1. PNR record locator
2. Date of reservation
3. Date(s) of intended travel
4. Name
5. Other names on PNR
6. All forms of payment information
7. Billing address
8. Contact telephone numbers
9. All travel itinerary for specific PNR
10. Frequent flyer information (limited to miles flown and address(es))
11. Travel agency
12. Travel agent
13. Split / divided PNR information
14. Ticketing field information
15. Ticket number
16. Seat number
17. Date of ticket issuance
18. No show history
19. Bag tag numbers
20. Go show information
21. Seat information
22. One-way tickets
23. Any collected APIS information
24. Standby
25. Order at check in

Part 3

SELECTION

Chapter 5

**ADVANCE PASSENGER INFORMATION/PASSENGER NAME RECORD
(API/PNR) and
PASSENGER INFORMATION SYSTEM (PAXIS) POLICY AND PROCEDURES**

Appendix B

API/PNR AUTHORIZED USERS AND ACCESS LEVEL

20/10/08

Part 3 Chapter 5

API/PNR and PAXIS

Appendix B

APPENDIX B: API/PNR AUTHORIZED CBSA OFFICIALS AND ACCESS LEVEL

Authorized Users	API Data Access	PNR Data Access		
		Immediate	Short Term	Long Term
		0- 72 hrs	72 hrs - 2 yrs	2 - 3.5 yrs
Air Passenger Targeter / Supervisor	X	X		
NRAC Program Officer / Supervisor	X	X	R	
Intelligence Officer** / Chief	X	X	R	
Intelligence Analyst	X		D	D
HQ Targeting Program Officer	X	X	R	
IS&T PAXIS Program Support	X	X	R	
Mangers HQ Targeting, Intelligence & NRAC	X	X	R	R*

** User must either be working in or in direct support of:

- An air passenger targeting operation or;
- The Borders Intelligence Division

X: Full access to data

D: De-personalized PNR data only (no traveller information)

R: Re-personalized PNR data with justification

R*: Access to Long Term Re-personalized PNR data requires CBSA Presidential approval.

ENFORCEMENT MANUAL

Part 3

SELECTION

Chapter 6

SURVEILLANCE

POLICY STATEMENT

1. The Canada Border Services Agency (CBSA) recognizes surveillance as a valuable investigative technique to obtain information for the purpose of furthering its enforcement mandate.

EFFECTIVE DATE

2. This policy came into effect on January 15, 2014, and replaces all previously issued policies related to CBSA surveillance activities.

PURPOSE AND SCOPE

3. This policy applies to all CBSA employees, including CBSA officers involved in Joint Forces Operations (JFOs) or other special projects where surveillance is required.
4. This policy provides CBSA officers and managers with guidelines for the initiation and conduct of surveillance operations.
5. For the purposes of this policy, surveillance is the covert observation of persons, vehicles, places or other objects to obtain information about individuals or organizations, where there are reasonable grounds to suspect they are in contravention of legislation administered by the CBSA.
6. Surveillance includes the following activities:

8. Surveillance-related operational procedures must be consistent with this policy and reviewed regularly to ensure continuing efficiency and compliance.

DEFINITIONS

9. **Note: The following definitions apply to this policy:**

Administration – administration of surveillance operational activity, regionally or nationally, including monitoring and reporting on the performance, cost and adherence to policy of CBSA surveillance operations.

CBSA certified officer – an officer who has successfully completed CBSA Surveillance Training.

Counter-surveillance – measures taken to detect surveillance by the target and/or associates. Counter-surveillance prevention measures are actions that are taken by a surveilling officer to prevent, avoid or deflect detection of a surveillance operation by the target or other persons, with the goals of preserving the covert nature of the surveillance operation and protecting the health and safety of the officer.

Joint Forces Operation (JFO) – a JFO is an ongoing or regularly occurring activity with law enforcement partners, either international or domestic, designed to reach well defined objectives that support the CBSA's enforcement mandate.

National Surveillance Coordinator (NSC) – the NSC is a senior advisor who coordinates CBSA surveillance activities on a national basis.

Operational Plan – a written description and signed document setting out a proposed surveillance activity, which assists the assessment of the objectives, challenges, risks, privacy implications, required resources, costs, and duration of the surveillance operation. See form BSF666 Operational Plan - Surveillance.

Program legislation – the *Canada Border Services Agency Act* and any other Act of Parliament or any instrument made under it, or any part of such an Act or instrument,

- (a) that the Governor in Council or Parliament authorizes the Minister, the Agency, the President or an employee of the Agency to administer and enforce, including the Customs Act, the Customs Tariff, the Excise Act, the Excise Act, 2001, the Immigration and Refugee Protection Act and the Special Import Measures Act;
- (b) that the Governor in Council or Parliament authorizes the Minister, the Agency, the President or an employee of the Agency to enforce, including the Agriculture and Agri-Food Administrative Monetary Penalties Act, the Canada Agricultural Products Act, the Feeds Act, the Fertilizers Act, the Fish Inspection Act, the Health of Animals Act, the Meat Inspection Act, the Plant Protection Act and the Seeds Act;
- (c) under which the Minister or another minister authorizes the Agency, the President or an employee of the Agency to administer a program or carry out an activity; or
- (d) under which duties or taxes collected and paid pursuant to the Customs Act are imposed.

Protective and defensive equipment – the meaning of protective equipment and defensive equipment is the same as that described in the Arming Directives – CBSA Directive on Agency Firearms and Defensive Equipment definitions section.

Reasonable expectation of privacy – the objectively reasonable expectation or belief by an individual that their activity in the particular circumstances of a given situation is private and will not be the subject of government intrusion or information gathering, including surveillance. The test is whether a reasonable and informed person would expect privacy in the entire context of the situation.

Reasonable Expectation of Privacy Assessment (REPA) – the assessment of whether the proposed surveillance involves an intrusion on the reasonable expectation of privacy of the individuals surveilled. The assessment must be prepared before the surveillance operation, and officers must re-evaluate the accuracy of the assessment during the operation.

Responsible Director – the regional Director responsible for enforcement and intelligence functions.

Surveillance Coordinator – the regional Enforcement and Intelligence officer in charge of the file and responsible for the planning and execution of the surveillance operation and the Final Report on the operation.

Surveillance method –

- a) Foot surveillance - moving surveillance carried out on foot;
- b) Mobile surveillance - moving surveillance carried out with the use of motor vehicles; or
- c) Static Surveillance - surveillance carried out from a fixed observation point, whether by officers or by the use of video recording.

Surveillance operation – an enforcement activity involving the covert observation and monitoring of a target's movements and activities. It can be based on the use of static, foot or mobile techniques.

AUTHORITIES

- 10. Authority for the CBSA to conduct surveillance arises from the duty of CBSA officers to administer and enforce program legislation. This authority supports the use of surveillance as an investigative technique in criminal investigations, in inland enforcement investigations, and as an intelligence tool to enable enforcement of CBSA program legislation.
 - 11. In order to legally conduct surveillance, the CBSA must have reasonable grounds to suspect the target of involvement in a contravention of CBSA program legislation, i.e. an individualized suspicion rather than a generalized suspicion that contraventions are occurring in a particular place or in association with a particular activity.
-

POLICY GUIDELINES

General

12. The nature of surveillance work requires specialized training and equipment to ensure operational effectiveness and that appropriate standards of health and safety are upheld.
- 13.
- 14.
15. Surveillance must be conducted in accordance with the authority and mandate of the CBSA, and in a way that does not infringe the *Code of Conduct* of the CBSA, the *Canadian Charter of Rights and Freedoms*, provincial traffic regulations, and other applicable legislation and policy.
16. Only CBSA Intelligence Officers, Investigators and Inland Enforcement Officers certified in surveillance and occupying positions where participation in surveillance operations is required may participate in surveillance operations.
17. The initiation and conduct of surveillance operations, arranging for surveillance training, and ensuring appropriate reporting is the responsibility of Responsible Directors.
18. Officers, including those assigned to JFOs, may participate only in surveillance operations that are unambiguously within the CBSA's enforcement mandate.
19. Surveillance activities shall be physically conducted only within Canada.

Approval Level for Operational Plans

20. The standard level of approval for surveillance Operational Plans is at the Responsible Director level except in the circumstances described in paragraphs 22 and 23, and cannot be delegated.
21. Where a JFO will be conducting surveillance and a CBSA officer(s) will be participating in the operation, the Operational Plan for the surveillance must be reviewed and approved by the Responsible Director, except as described in paragraphs 22 and 23.

22.

23.

Reasonable Expectation of Privacy

24. The authority of CBSA to conduct surveillance is limited by the *Canadian Charter of Rights and Freedoms* privacy rights of the individual(s) under surveillance, which ultimately determine whether the surveillance becomes an illegal warrantless search.

25.

26.

27. If a search warrant is obtained, normal surveillance (watching) incidental to the search can be conducted before entry and during the search for safety or security purposes without the warrant specifically authorizing surveillance. This watching would not include video or audio recording or the use of cameras.

28. Officers must comply with the procedural directions concerning the conduct of privacy expectation assessments and they shall be documented in the Operational Plan.

Electronic Surveillance (camera/video/audio/GPD)

29.

30.

31.

32.

Training and Certification

33. For the purposes of undertaking a surveillance operation, the Surveillance Coordinator will engage only officers who are properly certified in surveillance and have completed the driving course noted in paragraph 42.
34. Surveillance training will be provided to all Intelligence Officers, Investigators, Inland Enforcement Officers and their Responsible Managers whose job duties require participation in surveillance operations.
35. The maintenance of skills and re-certification of officers participating in surveillance is the responsibility of the Responsible Director, and will be monitored at the regional and national levels to ensure adherence to the policy standard.
36. The maintenance of skills and re-certification of Trainers and Certifiers in surveillance training and certification is the responsibility of the Vice

President, Human Resources Branch.

37. The design and development of all surveillance training products is the responsibility of the Human Resources Branch.
38. The approval of all training products is the responsibility of Programs Branch.
39. The designation of Trainers and Certifiers for surveillance courses is the responsibility of the Human Resources Branch.
40. Surveillance training programs must be regularly reviewed and be consistent with this policy, guidelines and procedures.
41. Surveillance training and certification can only be extended to other CBSA program areas with the approval of the Vice-President, Programs Branch and with the concurrence of the Vice-President, Operations.
42. All officers engaged in surveillance activities must have successfully completed a collision avoidance course as a pre-requisite to surveillance training. The Responsible Director is responsible for ensuring this is done.
43. All officers engaged in surveillance activities must have successfully completed the CBSA's Control and Defensive Tactics Training and will wear their issued equipment in accordance with the CBSA *Policy on the Wearing of Protective and Defensive Equipment*.

Protective and Defensive Equipment

44. Officers engaged in surveillance must comply with section 7.0.1 of the *Arming Directives - CBSA Standard Operating Procedures (SOP) on Agency Firearms and Defensive Equipment* and section 7.0.8 of the *Arming Directives - CBSA Standard Operating Procedures (SOP) on Agency Firearms and Defensive Equipment*.
 45. In accordance with section 7.0.8 of the *Arming Directives - CBSA Standard Operating Procedures (SOP) on Agency Firearms and Defensive Equipment*, where an enforcement action is unlikely and the risk of harm posed by the surveillance operation to officers and to any member of the public is assessed as low, or the wearing of defensive equipment increases the risk to officer safety, the Regional Director may allow officers to remove their protective and/or defensive equipment during the proposed surveillance operation or part thereof. This decision must be documented in writing in the Operational Plan and/or the Final Report.
-

46. Officers who are not wearing their protective and defensive equipment shall not engage in any enforcement action, such as an arrest.

Information Management

47. Information collected from a surveillance operation may be shared with law enforcement partners whenever allowed by law. The sharing of customs information is governed by section 107 of the *Customs Act*. The sharing of personal information collected under the *Immigration and Refugee Protection Act* is governed by the *Privacy Act*. The partner must be advised of the requirement for confidentiality.
48. Photographs and video recordings of individuals, either electronic or in hard copy, are personal information and must be handled and stored at a minimum as Protected B information.
49. All information collected from a surveillance operation must be managed, transmitted, stored and handled in accordance with Treasury Board Guidelines and CBSA information management policies, as well as in compliance with the *Security of Information Act* (R.S. 1985, c. O-5).

Exceptional Circumstances

50. Exceptional unforeseen circumstances that require an immediate response may warrant a deviation from the policy requirement for written approval of a written Operational Plan, provided that, prior to any surveillance activity, the Responsible Director is verbally briefed and provides verbal approval. In such cases, the Operational Plan and approval of same must be done as soon as possible after the verbal briefing and approval. This deviation from the policy is prohibited in cases involving surveillance that is likely to cause embarrassment or controversy for the CBSA or the Government of Canada, including those in or on the perimeter of religious institutions, post-secondary educational institutions, women's shelters, or hospitals.

ROLES AND RESPONSIBILITIES

Programs Branch

Responsible Programs Branch Director General or delegate

51. Responsibilities:

As functional program authority for the CBSA's surveillance activity,

- a) providing functional direction on the application of the policy;

- b) interpreting applicable policy, legislation and jurisprudence;
- c) Setting priorities and performance targets;
- d) Conducting analysis and identifying gaps and program improvements;
- e) Reallocating resources as necessary to respond to changing priorities, risks, performance, service levels, expected workload and opportunities;
- f) Consulting stakeholders;
- g) Monitoring and maintaining the *Surveillance Policy* and any appendices to ensure that they meet the needs of the CBSA and comply with relevant legislation and jurisprudence; and
- h) Setting standards for the minimum training required to conduct surveillance on behalf of the CBSA.

Operations Branch

Operations Branch Vice President

52. Responsibilities:

Operations Branch Vice President or delegate,

53. Responsibilities:

- a) Administering the national operations relating to CBSA surveillance activity;
- b) Implementing the policy and monitoring compliance with it and any associated procedures, directives and guidelines; and,
- c) Measuring and reporting to Programs Branch the national performance of the CBSA's surveillance activity on a regular basis.

Responsible Headquarters Operations Branch Director General, or delegate

54. Responsibilities:

- a) Ensuring that compliance monitoring occurs on a regular basis to ensure consistent national program delivery;
- b) Recommending to the Responsible Director General, Programs Branch, amendments or updates to the Surveillance Policy and any appendices;
- c) Reporting to the Responsible Director General, Programs Branch, any operational occurrences, issues or information which may have a significant impact on the integrity of the CBSA's surveillance activity.

National Surveillance Coordinator (NSC), Enforcement and Intelligence Operations Directorate, Operations Branch, National Headquarters:

55. Responsibilities:

- a) Coordinating surveillance training with regions and Training and Development Directorate, Human Resources Branch;
- b) Reviewing approved regional surveillance Operational Plans, and Final Reports following the operation, for the purpose of issue identification and resolution and data reporting;
- c) Acting as a national point of contact for surveillance-related policy, procedural or training-related issues needing resolution;
- d) Reporting on the costs of surveillance operations and compliance with policy and procedures; and
- e) Measuring and reporting to senior management the national performance of the CBSA's surveillance activity on a regular basis.

Operations Branch (Regions)

Regional Directors General

56. Responsibilities:

- a)

b)

- c) Applying the *Surveillance Policy*, procedures and directives in their region;
- d) Forwarding any policy concerns or unresolved disputes to the Responsible Headquarters Director General, Operations Branch, for resolution.

Enforcement and Intelligence Directors

57. Responsibilities:

- a) Approving surveillance Operational Plans except in those cases where the Regional Director General or Vice President, Operations must approve;
- b) Approving or refusing surveillance activities in exceptional circumstance cases as defined by this policy;
- c) Ensuring that officers, including those assigned to Joint Forces Operations, participate only in surveillance operations that are unambiguously within the CBSA's enforcement mandate;
- d) Ensuring all officers receive the required training and are re-certified when required;
- e) Authorizing the disclosure of information obtained via surveillance to partner agencies;
- f) Terminating or cancelling a surveillance operation;
- g) Providing the National Surveillance Coordinator at Headquarters with copies of approved Operational Plans and Final Reports and regular performance reporting on surveillance;
- h) Ensuring that Headquarters (Human Resources / Operations / Programs Branches) is provided with subject matter expertise for the purpose of policy/procedural development or for training development/delivery, when needed; and
- i) Taking appropriate corrective action in the event of any breach of this policy.

Responsible Managers

58. Responsibilities:

- a) Reviewing Operational Plans for completeness and compliance with policy and procedures and, if warranted, forwarding them to the Responsible

Director for approval;

- b) In exceptional circumstances, ensuring that appropriate approval is obtained for surveillance activity and that the Operational Plan is submitted for written approval as soon as possible;
- c) Ensuring appropriate contacts are made to advise of the operation or to seek assistance where the surveillance operation is likely to enter another Region or involve another Region;
- d) Informing other Enforcement and Intelligence Managers in their region of surveillance operations relating to files held by the other party.

Surveillance Coordinators

59. Responsibilities:

- a) Preparing the surveillance Operational Plan;
- b) Ensuring that the necessary risk assessments are done and fully documented in the surveillance Operational Plan;
- c) Referring the completed Operational Plans to the Responsible Manager for review and forwarding to the Responsible Director for approval;
- d) Coordinating the activities of the surveillance team;
- e) Conducting surveillance briefing and de-briefing sessions;
- f) Preparing a daily surveillance report;
- g) Completing the Final Report on the surveillance operation; and,
- h) Coordinating information exchange with other agencies and submitting these exchanges to the Responsible Manager for approval.

Intelligence Officers, Investigators, and Inland Enforcement Officers

60. Responsibilities:

- a) Executing surveillance according to the policy and procedures and in accordance with the Operational Plan;
- b) Keeping a time and activity log of all movements and relevant observations in their notebooks; and,
- c) Using and maintaining equipment for surveillance purposes; and

- d) Advising the Responsible Manager as soon as possible in cases of exceptional circumstances so that appropriate approvals may be obtained.

Human Resources Branch

61. Responsibilities:

- a) Designating Trainers and Certifiers for surveillance training courses; and
- b) Re-certifying Trainers and Certifiers in surveillance training and certification.

PROCEDURES

Surveillance

- 62. CBSA Intelligence Officers, Criminal Investigators, Inland Enforcement Officers, responsible Managers and their responsible Directors are responsible for conducting surveillance operations according to the CBSA *Surveillance Policy* as well as the Procedures set out herein.
 - 63. Responsible Directors must ensure that CBSA officers involved in Joint Forces Operations (JFO) are aware that they must adhere to the CBSA *Surveillance Policy* and these Procedures when engaged in surveillance activities within the JFO. When establishing CBSA participation in JFOs, the JFO partners shall be made aware of the CBSA *Surveillance Policy* and Procedures.
 - 64. A surveillance operation is always conducted by a team of certified officers under the coordination of an officer who has been assigned the role of Surveillance Coordinator (SC) for the operation.
 - 65. If warranted, the responsible Director or Manager may divide the SC role into a File Coordinator role responsible for all paperwork, risk assessments, and briefings as well as gathering and collating the notes and preparing reports, and a Road Boss role responsible for the operation's set up, coordination of the team's on-ground movement, and making tactical decisions during the operation. Where the SC role is split, the two officers must cooperate fully and keep each other fully informed of all plans, developments, problems, and results relating to the operation.
 - 66.
 - 67.
 - 68.
-

69.

70.

71.

72.

73.

Planning

74.

75.

76. Responsible Managers of Intelligence, Criminal Investigations, and Inland Enforcement will ensure that efforts are made to identify and inform each other of surveillance operations related to files held by the other party, where appropriate. Each may call upon the others for assistance in surveillance operations.

77. Surveillance operations require approval by the responsible Director or in certain cases as specified in the Policy, by the Regional Director General or the Vice President, Operations, and will only be approved and conducted upon completion of a CBSA surveillance Operational Plan.

78. The SC will prepare an Operational Plan, reporting the details of the proposed surveillance activity.

79. In addition to any other information required by the Operational Plan form, all Operational Plans must include the following information:
- a. A clear objective of the surveillance operation;
 - b. The CBSA enforcement and intelligence priority supported by the operation;
 - c. Background for the operation;
 - d. The expected outcomes of the operation, i.e. what information the region hopes to obtain;
 - e. Target details, including risk assessment, vehicles and businesses;
 - f. Results of the reasonable expectation of privacy assessment;
 - g. Officer risk/threat assessment, including a recommendation on whether officer should be permitted to remove their protective and defensive equipment during the operation; and
 - h. A breakdown of proposed budget for the operation
80. Agency policy and practices on *Criminal Code* warrants must be followed should a warrant be sought.
81. Where a warrant is necessary to commence or continue surveillance, the SC will comply with the *Criminal Code* procedures for the issuance of s.487.01 general warrants.
82. A general warrant under s.487.01 cannot be issued unless there are reasonable grounds to believe that an offence under an Act of Parliament has or will be committed and that information concerning the offence will be obtained through the use of the warrant. This means that warrants cannot be sought for purely regulatory or administrative investigations or intelligence gathering where there is no focus on an actual offence for which charges are contemplated. There must be reasonable grounds to believe that a specific offence or offences are involved.
- 83.
84. The responsible Director has the authority to define the minimum number of officers required in a surveillance operation on a case-by-case basis, taking into consideration the risk assessment of the operation and achievable operational objectives.
- 85.

86. Measures that may be employed to prevent the detection of surveillance or counter-surveillance should be considered when planning and conducting all surveillance operations.
87. Prior to undertaking a surveillance operation, the SC will conduct a briefing with all participating officers. The briefing will include a review of the Operational Plan, target sheets, equipment and communication methods to be used, daily objective, shift scheduling, and where practicable and feasible, contingency and withdrawal plans.
- 88.
- 89.
90. Prior to undertaking a surveillance operation, the SC will conduct a Reasonable Expectation of Privacy Assessment (REPA) in accordance with the guidelines set out in Appendix A and document it the Operational Plan.
- 91.

Execution

92. In cases where a surveillance operation is likely to enter or involve another region, responsible Managers or the SC will ensure that appropriate contacts are made to advise and if required, seek assistance from local CBSA Enforcement and Intelligence resources in the other region
93. For mobile surveillance, the driver is responsible for vehicle booking, ensuring the vehicle is in good operational condition, and ensuring that vehicle documentation (insurance, registrations, credit cards) is valid and available. At the end of the surveillance shift, the driver is responsible for re-fuelling the vehicle and reporting any vehicle malfunctions.

94. On the day of the surveillance operation, the surveillance team is deployed under the direction of the SC. The SC will direct a team set-up and coordinate on-ground movement.

95.

96. All surveillance activities must be recorded. Officers on surveillance must record a time and activity log of all movements and relevant observations made during the surveillance operation in their notebooks when safe to do so or as soon as possible after the observation, in compliance with CBSA's policy on notebooks.

Termination and Reporting

97. At the end of the surveillance shift, team members will submit photocopies or scans of their surveillance notes to the SC. These notes will be collated and entered into the surveillance target's file. Officers will also submit photos and videotape taken during the surveillance operation to the SC.

98. The SC will ensure that the responsible Manager and Director are kept updated on the operation as it progresses. The SC will ensure that any significant issues, problems or concerns are brought to the attention of the responsible Manager immediately so that an informed decision can be made on whether the operation will continue or cease.

99. New information obtained from the surveillance operation must be further developed prior to engaging in additional surveillance activity. This would include indices checks on vehicles, addresses, and persons identified during the surveillance operation.

100. The SC will also coordinate information exchange with other agencies when necessary, ensuring compliance with all relevant laws and policies relating to the sharing of information. Information sharing with other agencies during or subsequent to the operation is to be documented in the final report.

101. Upon the completion of the surveillance operation, a debrief will be held with all team members.

102. Following the debrief, the SC will complete a Final Report, to include the following information:

- a) whether each objective of the operation was met and if so, how;
- b) results of the operation including the following:

- i. Relevant evidence of offence or contravention obtained;
- ii. Charges were laid;
- iii. A search warrant was issued;
- iv. An arrest warrant was issued;
- v. An arrest was effected;
- vi. Immigration enforcement action was initiated (provide details);
- vii. Contraband or currency was seized;
- viii. Documents were seized;
- ix. Lookout(s) created;
- x. Informant coded;
- xi. Controlled delivery operation initiated;
- xii. Production order was submitted and was successful;
- xiii. Referral of information to partners;
- xiv. Other (provide details)

- c) the actual hours involved in the operation;
- d) the actual number of officers involved;
- e) the actual costs incurred for each type of expense listed in the Operational Plan (this can be inserted into the operational plan form where indicated and initialed);
- f) any other pertinent information.

103. The Final Report will be signed by the responsible Director and appended to the Operational Plan. It will be included in the surveillance file.

104. The surveillance operation must be documented in the automated file management system or appropriate record file.

105. After completion of the operation, the surveillance Operational Plan (BSF 666) and appended Final Report signed by the responsible Director is to be transmitted to the National Surveillance Coordinator (NSC) at headquarters by encrypted email if Protected B, or sent by secure courier (double envelope) with appropriate security markings if classification is above Protected B.

106. If necessary, personal or other identifying information can be redacted from the Operational Plan and/or the Final Report to protect the operation's integrity, so that it can be sent to the NSC. The NSC requires sufficiently detailed information to be able to evaluate compliance with the policy and procedures as well as value for investment and performance.

Counter Surveillance

107.

108.

109.

110.

111. When it has been determined the surveillance operation will be terminated, the SC will notify all team members and instruct them as to procedure.

112.

Information / Evidence

113. All surveillance operations which capture any personal information will be classified as Protected B at minimum. As a result, surveillance Operational Plans, reports, binders, images, photographs, video recordings, including target sheets or books, and Final Reports must be preserved and securely stored in accordance with CBSA requirements for Protected B information. If the information is classified above Protected B, information storage must comply with the relevant CBSA information storage requirements for Protected C or above.

REFERENCES

114. *Canada Border Services Agency Act*
Customs Act and Regulations
Customs Act, s.107
Customs Tariff
Excise Act

Excise Act, 2001
Export and Import Permits Act and Regulation
Immigration and Refugee Protection Act and Regulations
Agriculture and Agri-Food Administrative Monetary Penalties Act
Canada Agricultural Products Act
Feeds Act
Fertilizers Act
Fish Inspections Act
Health of Animals Act
Meat Inspection Act
Plant Protection Act
Seeds Act
Special Import Measures Act
Interpretation Act
Privacy Act
Criminal Code of Canada
*Wild Animal and Plant Protection and Regulation of International and
Interprovincial Trade Act (WAPPRIITA)*

ENQUIRIES

115. Enquiries related to the Surveillance Policy and Procedures can be addressed to the Director, Program Management Division, Enforcement and Intelligence Programs Directorate, National Headquarters.

Part 3

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 6

SURVEILLANCE

Appendix A

REASONABLE EXPECTATION OF PRIVACY ASSESSMENT

GENERAL

1. Section 8 of the *Canadian Charter of Rights and Freedoms* grants individuals the right of freedom from unreasonable search and seizure. The courts have interpreted this right as offering protection from unjustified state intrusion into individual privacy. Individual privacy may relate to their person, places, or information.
2. State surveillance of individuals without a judicial warrant can amount to an unjustified search if it intrudes on an individual's reasonable expectation of privacy.
3. In order to legally conduct surveillance, the CBSA must have reasonable grounds to suspect the target of involvement in a contravention of CBSA program legislation, i.e. an individualized suspicion rather than just a general suspicion that contraventions are occurring.
4. The SC must conduct a Reasonable Privacy Expectation Assessment (REPA) in relation to the target prior to the operation and must document it in the Operational Plan.
- 5.
6. Privacy expectations should be interpreted broadly.

REPA TEST

CBSA ENFORCEMENT MANUAL

Part 3

SELECTION

Chapter 7

CONFIDENTIAL HUMAN SOURCE POLICY

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to only interact with Confidential Human Sources (CHS) within a well-managed and monitored CHS program, for recruiting, developing and handling persons and information. The program is based on the CBSA's commitment to the principles of: confidentiality, sound risk management and responsible financial and resource accountabilities.

EFFECTIVE DATE

2. This policy came into effect on September 5, 2014, and replaces all previously issued policies and directives related to the use of CHS and/or informants.

TRANSITIONAL MEASURES

3. The responsible Director General (DG), Operations Branch, in consultation with the responsible Director General, Programs Branch, may grant exceptions on a regional basis to allow management of CHS cases to continue where training and certification under this policy have not occurred. Exceptions made under this provision will expire 2 years after the effective date.

PURPOSE AND SCOPE

4. The purpose of this policy is to govern the CBSA's interaction with CHS and the management of the information they provide to the CBSA.
5. This policy sets out who may engage in activities with CHS program participants. It applies to all activities related to CHS program participants and potential CHS program participants, and the CBSA CHS program, including engaging in joint activities with other agencies.
6. This policy applies to all CBSA employees.

DEFINITIONS

7. Note: The following definitions pertain to this policy:

Administration – administration of the CHS program, including managing the human resources, the registration process and the financial activities.

Agent – a person who acts on the direction of a law enforcement officer to assist in the development of a target operation. Direct involvement and association with a target may result in an agent becoming a material and compellable witness.

Anonymous Source – a Human Source whose identity is unknown. This type of source could be encountered through the Border Watch Line, Crime Stoppers or other methods of contact. Any information of potential intelligence or enforcement value received by a CBSA employee from an Anonymous Source should be reported using established referral mechanisms within the CBSA.

Canadian Fundamental Institutions (CFI) – include political, religious, post-secondary and media establishments. Members of a political CFI include provincial or territorial elected officials and Canadian federal government officials including "exempt" staff.

CBSA employee – any person employed by the CBSA in the administration or enforcement of acts and regulations known as "program legislation" as defined in section 2 of the *CBSA Act*.

Certified CHS Officer – a regional CBSA officer who has successfully completed a nationally approved CBSA CHS training program and has received and retained certification.

Co-handler – a Certified CHS Officer assigned by the DRC to assist the Handler or to act as an alternate to the Handler.

Confidential Human Source (CHS) - a member of the public who volunteers information of potential intelligence or enforcement value to the CBSA, who requests that their identity be treated confidentially and receives assurances of confidentiality from a Certified CHS Officer, without expectation that a relationship with the Certified CHS Officer will be initiated or maintained.

CHS program participant – a person who:

- is willing to provide information of value, related to the mandate of the CBSA, that cannot be easily obtained through other sources;

and

- indicates to a CBSA employee that he/she wishes his/her identity to be treated confidentially;

and

- after a positive CBSA evaluation, receives an assurance of confidentiality from a Certified CHS Officer and is registered within CBSA as a CHS program participant.

Confidential Human Source Coordinator (CHSC) – a CBSA Senior Advisor located at Headquarters (HQ) who coordinates the national administration of the CHS program.

Confidential Human Source Program (CHS Program) – a CBSA nationally administered program that involves management, coordination and operations pertaining to CHS.

Confidentiality – protection of a person's identity and the information that he or she provides, within the CBSA and between the CBSA and its law enforcement and intelligence partners.

Designated Regional Coordinator (DRC) – a regional CBSA Manager of Enforcement and Intelligence (E&I) who has been designated by a Regional Director of E&I to provide operational guidance and carry out the regional administration activities of the CHS program. The DRC must have successfully completed a nationally approved CBSA CHS training program, received certification and a briefing session with the CHSC.

Front-Line Manager – a CBSA Supervisor of a CHS Certified Officer who has successfully completed a nationally approved CBSA CHS training program and has received certification. The Front-Line Manager may act as a Handler or Co-handler.

Handler – a Certified CHS Officer assigned by the DRC to be the primary contact with a particular or potential CHS program participant.

Human Source – a member of the public who volunteers information of potential intelligence or enforcement value to the CBSA.

AUTHORITIES

8. Authority for the CBSA to recruit, develop and manage CHS program participants arises from the duty of CBSA officers to administer and enforce program legislation. This authority supports the use of CHS as an investigative technique in criminal investigations, in inland enforcement investigations, and as an intelligence tool to enable enforcement of CBSA program legislation. The authority for the CHS program only exists with respect to a program or activity the CBSA is responsible for pursuant to program legislation.

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POLICY GUIDELINES

9. Notwithstanding any provision or procedure contained in this policy and its associated procedures, any issue that is likely to cause embarrassment or controversy for the CBSA or the Government of Canada must be immediately reported to the Canada Border Services Agency Executive via the Vice-President (VP) of Operations Branch.

General

10. The CBSA recognizes that valuable information supporting enforcement and intelligence activities can be obtained from relationships with Confidential Human Sources, provided that their identities are treated confidentially due to a risk of danger to those persons as a result of their disclosure of the information to the CBSA.
11. The CBSA recognizes that the use of CHS information brings with it a number of risks, which include:

- a. Risk of civil liability against CBSA in the event that injury or harm comes to the Human Source;
 - b. Risk of civil liability against CBSA in the event that injury or harm comes to the Handler or Co-handler of the Human Source;
 - c. Risk of civil liability against CBSA in the event that the Human Source causes injury or harm to somebody else; and
 - d. Risk of criminal liability against persons employed by CBSA in the event that the Human Source engages in criminal activity.
12. When a person is willing, under the condition of confidentiality, to give the CBSA information of sufficient value that it outweighs potential risks, and the CBSA approves of the person, the CBSA shall register a person as a CHS program participant.
13. A Confidential Human Source with whom the CBSA has an ongoing relationship involving the giving of information shall be registered in the CHS program, in accordance with this policy.
14. Only a Certified CHS Officer shall be authorized to maintain a relationship with a CHS program participant for the purpose of obtaining information related to the CBSA mandate.
15. In-person contact with CHS program participants must take place in a safe location, in the presence of two Certified CHS Officers, and must have an operational plan that addresses the risk and is approved by a DRC.
16. Successful completion of a nationally approved CBSA CHS training program shall be required to obtain the designation of Certified CHS Officer.
17. A Certified CHS Officer must possess and retain CBSA Duty Firearm Course (DFC) certification at all times.
18. Certified CHS Officers shall not knowingly maintain relationships with Confidential Human Sources or CHS program participants outside of the parameters of this policy.
19. Certified CHS Officers working in Canada shall be the only CBSA employees who may recruit and handle a CHS program participant. CBSA employees shall not develop a relationship with a Human Source or recruit or handle a CHS program participant outside of Canada.

20. Certified CHS Officers will treat Confidential Human Sources and CHS program participants in an ethical and professional manner, compliant with the *Canadian Charter of Rights and Freedoms*, and be mindful of the responsibility they owe to the Human Source or CHS program participant, as well as the potential liability if they fail to meet this responsibility.
21. CBSA employees shall not knowingly use an agent or direct a person in such a way that it could cause him or her to become an agent for the CBSA.
22. Certified CHS Officers will ensure that CHS program participants understand they are not employees of the CBSA and are advised that CHS program participant cooperation will not have any bearing on current or future immigration proceedings or any other CBSA investigation, nor will it mitigate or provide immunity from investigation or administrative or criminal charges. They shall also ensure to advise CHS program participants on the role of the DRC and the mechanisms to report a complaint.
23. Where it is known or suspected that a CHS program participant is in immediate danger due to his or her relationship with the CBSA, there will be immediate referral to a law enforcement agency able to offer protection to the CHS program participant.
24. Where the CHS program participant is found to be involved or in some way implicated in an ongoing criminal investigation or administrative process under the *Immigration and Refugee Protection Act (IRPA)*, it is essential that the CBSA notify the Crown counsel and, where applicable, the criminal investigator or Hearings Officer of the nature of the relationship to determine whether there is likely to be any issue regarding the use of this information.

GOVERNANCE

25. The CHS program shall be centrally administered and coordinated to provide a central point for registration of CHS program participants and to support the consistent national application of policy and overall program integrity.
26. Certified CHS Officers shall not act jointly with another law enforcement agency as a Handler or Co-handler. In the exceptional circumstances where joint handling is recommended, approvals shall be sought in accordance with Section 32 of this policy. Any approved joint handling must be in strict accordance with this policy and the CBSA mandate. A written notification of the parameters within which the CBSA can handle CHSPP will be provided to the partner agency Co-handler and this action will be documented on the file.

RISK ASSESSMENT

27. The CBSA shall apply strict conditions for acceptance of a CHS program participant, including the requirement for a thorough risk assessment, and to the management and termination of a relationship.

28. As part of the risk assessment, the Certified CHS Officer shall evaluate the effect that offering confidentiality will have on the ability to pursue criminal charges or bring removal proceedings against other persons.

29. Certified CHS Officers shall ensure that requests to register a person as a CHS program participant are based on the results of a risk assessment that balances the benefits of the information the person can provide against the risks posed by allowing a person to become a CHS program participant.

30. Proscribed Categories

The CBSA will not knowingly recruit, identify or use the following persons as a CHS program participant:

31. Special Approvals Categories

A potential CHS program participant who falls into any of the categories listed below will not be accepted as a CHS program participant unless an enhanced risk assessment is carried out and special approval granted by the President of the CBSA or delegate. The Special Approvals Categories are:

A person:

EXCEPTIONAL CIRCUMSTANCES

32. Exceptional circumstances may warrant a deviation from the policy or procedures, directives or guidelines. Such a course of action may be undertaken only with the written approval from the VP or Associate Vice-President (AVP), Operations Branch, in consultation the VP or AVP Programs Branch. This does not apply to the Proscribed Categories or to the Special Approvals Categories of this policy.

INFORMATION MANAGEMENT

33. A separate file must be created in the region and at HQ for each CHS program participant for the purposes of storing all information related to the use of a CHS program participant, including, but not limited to: biographical data, evaluation information, risk assessment, records of interaction, information provided, and related financial records.
34. The CBSA will retain the file and records of all terminated CHS program participants.
35. Relevant information provided by a Human Source or CHS program participant should be shared within the CBSA Enforcement and Intelligence program areas to ensure the maximum benefit to the CBSA.
36. Information provided by a Confidential Human Source or CHS program participant may be shared with law enforcement partners whenever authorized by law. The partner must be advised of the requirement for confidentiality.
37. All information must be managed, transmitted, stored, and handled in accordance with Treasury Board Guidelines and CBSA information management policies, as well as in compliance with the *Security of Information Act* (R.S., 1985, c. O-5). All information that could reveal the identity of a CHS program participant must be designated as Protected C.

FINANCIAL MANAGEMENT

38. The CBSA financial framework addressing the management and monitoring of all aspects of CHS awards and expenditures will comply with the *Financial Administration Act*, 1985 regulations and will establish procedures to calculate awards.
39. Reasonable expenses may be incurred in the course of developing relationships with prospective CHS program participants and current CHS program participants.
40. Monetary awards may be provided to a CHS program participant whenever previous information is assessed to be of significant value. No financial consideration will be promised or negotiated with a CHS program participant in order to solicit information.

OVERSIGHT AND REVIEW

41. A Certified CHS Officer will review all active CHS files in his caseload at least once a year to report on the health and results of the relationship and submit the report to the DRC.
42. If a CHS program participant was registered prior to the effective date of this policy, the evaluation process must be carried out as soon as operationally possible, but no later than one calendar year from the effective date.
43. The DRC will convene a face-to-face meeting with each CHS program participant in his/her region to determine whether the relationship is being maintained in compliance with the policy, to provide financial oversight, and to otherwise ensure program integrity in the following circumstances:
 - a) Annually, where the CHS program participant has received a monetary reward in that year;
 - b) Annually, where the CHS program participant was subject to the Special Approvals process;
 - c) At any time, at the discretion of the DRC for program integrity and oversight reasons;
 - d) At the direction of the CHSC or Regional Director General;
 - e) At the request of the CHS program participant.
44. All DRC management and oversight activities will be reported to CBSA senior management as required by procedures.

APPROVAL LEVELS FOR REGISTRATION

45. The standard level of approval for the registration of CHS program participants is the Director General, Operations Branch (HQ) or delegate level.
46. The standard level of approval of the registration of Special Approval category CHS program participants is at the President or delegate level.

- 47. Approving exceptions on applications to the policy in specific cases, in consultation with VP or AVP Programs Branch, is at the VP or AVP, Operations Branch level.
- 48. The standard level of approval for the forced termination of a CHS relationship with a particular CHS program participant is at the Regional Director General level, in consultation with DG Operations Branch (HQ).

APPROVAL LEVELS FOR OPERATIONAL PLANS

- 49. The standard level of approval for meetings between Handlers and CHS program participants is the DRC in collaboration with the Front-Line Manager level.
- 50. The standard level of approval of debriefs and reports associated with a CHS program participant is the DRC in collaboration with the Front-Line Manager level.

APPROVAL LEVELS FOR FINANCIAL MANAGEMENT

- 51. The standard level of approval for monetary award calculations and disbursements is at the Director General, Operations Branch (HQ) level.

ROLES AND RESPONSIBILITIES

President

Responsibilities:

1. Inform the Minister of Public Safety and Emergency Preparedness of any CBSA CHS operation that impact or appears to impact the integral role and functions of a CFI.
2. Inform the Minister of Public Safety and Emergency Preparedness of any CBSA CHS activity that may have a significant adverse impact, such as:
 - a) Giving rise to public controversy;
 - b) Impacting the safety of an individual;
 - c) Affecting domestic or intergovernmental relations;
 - d) Affecting Canadian relations with any country of international organization of states; and or
 - e) Contravening any of the guidelines set out in this direction and/or any CBSA policy associated with CHS.
3. Approving the registration of a CHS program participant as defined in the Special Approval category.

Vice-President or Associate Vice-President, Operations Branch

Responsibilities:

4. Approving exceptions on applications to the policy in specific cases (this does not apply to Proscribed Categories or to the Special Approvals Categories of the policy), in consultation with VP or AVP Programs Branch.

Programs Branch

Responsible Director General or delegate

Responsibilities:

5. As functional program authority for the CHS program, providing functional direction on the application of the policy, interpreting applicable policy, legislation and jurisprudence, and consulting stakeholders where necessary.
6. Monitoring and maintaining the CHS Policy and any annexes, procedures, guidelines, and directives.
7. Reviewing this policy and any annexes, procedures, guidelines, and directives on an ongoing basis to ensure that they meet the needs of the CBSA and that they are in compliance with all relevant legislation and jurisprudence.
8. Setting standards for the minimum training required to deal with CHS program participants and the information they provide.
9. Measuring and reporting the national performance of the CHS program.

Operations Branch

Responsible Director General (HQ) or delegate

Responsibilities:

10. Administering the national operations of the CHS program.
11. Implementing the policy and monitoring compliance with it and any associated procedures or directives. Ensuring that compliance monitoring occurs on a regular basis to ensure consistent national program delivery.
12. In consultation with the Director General, Programs Branch, making exceptions on a regional basis to allow management of CHS program participants' cases to continue where training and certification under this policy have not yet been implemented.

13. Providing subject matter expertise to the Programs Branch and to the Regions in the management and administration of Human Sources and CHS program participants.
14. Following the CHS financial management framework, managing source development expense disbursements, and approving monetary award calculations and disbursements.
15. Recommending to the responsible Director General, Programs Branch, amendments or updates to the policy or any annexes, procedures, guidelines, directives, and training programs.
16. Reporting to the President, any operational occurrences, issues or information which may have a significant impact upon the CHS program's integrity.

Operations Branch

Regional Directors General (Regions)

Responsibilities:

17. Implementing the policy and monitoring compliance with it and any associated procedures or directives within the region.
18. Approving the forced termination of a CHS relationship with a particular CHS program participant in consultation with DG, Operations Branch (HQ).
19. Reviewing and submitting any policy concerns or disputes to the responsible DG, Operations Branch (HQ), for resolution.
20. Resolving any conflicts of interest between the CBSA and partner agencies in the use of a CHS program participant.

Enforcement and Intelligence Directors (Regions)

Responsibilities:

21. Assigning a regional CBSA Manager of Enforcement and Intelligence as the DRC.

22. Resolving any disputes between program areas as referred by the DRC, and referring any unresolved disputes to the Regional Director General.
23. Recommending the forced termination of a CHS relationship with a particular CHS program participant to the Regional Director General.
24. Referring any conflicts of interest between the CBSA and partner agencies in the use of a CHS program participant to the Regional Director General.
25. Following the CHS financial management framework, recommending approval for expenses through a standardized source development expenditure report and recommending approval for monetary awards to the DG, Operations Branch (HQ), and ensuring that the Regional Director General is kept apprised of source development expenditures and awards.
26. Authorizing, in consultation with the DRC and Handler, the release of information to partner agencies.
27. Providing Headquarters (Operations/Programs Branch) with regular performance reports.

Designated Regional Coordinators (DRC)

Responsibilities:

28. Acting as regional point of contact for the regional CHS program and authorizing the submission of registration applications to the CHSC.
29. Providing subject matter expert guidance to Front-Line Managers and officers.
30. Maintaining the regional list of CBSA employees qualified to handle CHS program participants.
31. Ensuring that only trained CBSA Certified CHS Officers handle a CHS program participant and assigning the Handler and Co-handler in consultation with Front-Line Managers.
32. Approving meetings, in collaboration with Front-Line Managers, between Handlers and Human Sources or CHS program participants

33. Reviewing and approving, in collaboration with Front-Line Managers, written documentation, debriefs and reports associated with a CHS program participant.
34. Monitoring meetings between a Certified CHS Officer and a CHS program participant and maintaining a record of meetings in the appropriate CHS program participant file.
35. Reviewing and approving written documentation associated with a CHS program participant.
36. Periodically auditing CHS files and Certified CHS Officers' notebooks and reviewing the relationship between Handler/Co-handler and CHS program participant.
37. Reviewing and assessing information received from a CHS program participant.
38. Recommending the termination of a relationship with a particular CHS program participant.
39. Following the CHS financial management framework, recommending approval for expenses through a standardized source development expenditure report and recommending approval for monetary awards.
40. Recommending the release of information to partner agencies.
41. Facilitating the referral of a CHS program participant who is in danger due to his or her relationship with the CBSA to a law enforcement agency that may be able to offer protection to the CHS program participant.
42. Providing the responsible DG, Operations Branch, with a report, without delay, on any occurrences which may impact the CBSA's integrity or on any information or issues which may be of significant interest to the CBSA.
43. Auditing CHS files and Officers' notebooks and reviewing the relationship between Handler/Co-handler and CHS program participants on a regular basis.

Front-Line Managers

Responsibilities:

- 44. Recommending approval of registration applications and forwarding to the DRC.
- 45. Reviewing Source Development Expenditure Reports and Award Assessments to ensure compliance with the CHS financial management framework.
- 46. Suggesting Handlers and Co-handlers to the DRC.
- 47. Reviewing and assessing information received from Human Sources or CHS program participants.
- 48. Monitoring the relationships and interactions between the Handler/Co-handler and Human Sources or CHS program participants.

Handlers

Responsibilities:

- 49. Conducting preliminary interviews of potential CHS program participants and performing in-depth background checks; advising the DRC of the results of the interviews and checks; providing recommendations and conducting risk assessments.
- 50. Managing all contacts with a CHS program participant, briefing CHS program participants on acceptable conduct in accordance with the policy and procedures, and recording and reporting all information, meetings, and contacts and advising the DRC accordingly.
- 51. Evaluating and assessing the information provided by the CHS program participants.
- 52. Ensuring that the regional files contain all required documents and approvals.
- 53. Carrying out an annual review of each file and personally interviewing each CHS program participant to ensure the stability of the CHS program participant and the relationship, and reporting any concerns to the DRC.

54. Preparing the application for and presenting awards, following the CHS financial management framework.
55. Referring or requesting the referral of a CHS program participant who is in danger due to his or her relationship with the CBSA to a law enforcement agency that may be able to offer protection to the CHS program participant.

Co-handlers

Responsibilities:

56. Supporting the Handler in the management of a CHS program participant from an administrative and operational perspective.
57. Providing an alternate point of contact in the absence of the Handler.
58. Witnessing and corroborating all contact, meetings, events, including the presentation of awards, between the CHS program participants and the Handler.
59. Assisting the Handler in the annual review of files.

CUSTOMS ENFORCEMENT MANUAL

Part 3

SELECTION

Chapter 8

JOINT FORCES OPERATIONS POLICY

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to participate in Joint Forces Operations (JFO) to support the CBSA's mandate and priorities, guided by the principles of cooperation, recognition of respective expertise and the effective, efficient use of Government of Canada resources.

PURPOSE AND SCOPE

2. This policy provides CBSA employees with guidelines for initiating and managing the CBSA's participation in JFOs and describes the roles and responsibilities regarding the management and oversight required for the CBSA's participation in JFOs.
3. This policy promotes a national and strategic approach to CBSA JFO participation, with appropriate National Headquarters (NHQ) direction.
4. This policy applies to CBSA employees who design, manage or participate in JFOs.
5. This policy must be read in conjunction with other CBSA policies, including the CBSA Policy on Use of Force and Defensive Equipment, memoranda of understanding and procedures that pertain to assisting police/law enforcement agencies. (e.g. *Royal Canadian Mounted Police (RCMP) Joint Policy* and the *Information Sharing Policy for the Enforcement Program*).
6. This policy does not cover the related but distinct notion of "ad hoc assistance" to law enforcement.

DEFINITIONS

7. A JFO is an ongoing or regularly occurring activity with law enforcement partners, either international or domestic, designed to reach well defined objectives that support the CBSA's mandate.
8. A **JFO Agreement** refers to the combination of two written components, a JFO Assessment Form and a JFO Written Collaborative Arrangement (JFO-WCA).
9. A **JFO-WCA** refers to any document that sets out the parameters of a working partnership or relationship within a JFO and that complies with the *CBSA Policy and Guide for the Management and Development of Written Collaborative Arrangements*.

10. A **JFO Assessment Form** is a written description of the proposed JFO activity that provides information that may not be captured by a WCA, and will be used within the CBSA for JFO monitoring and reporting purposes.
11. A **Manager** is an Intelligence, Criminal Investigations or Inland Enforcement Manager involved in the management of a JFO, in the Regions or at HQ.
12. A **JFO Coordinator** is the Enforcement and Intelligence Manager or Senior Officer who has been designated by the Director General of Enforcement and Intelligence Operations to provide guidance and to support the reporting activities related to all JFOs.

AUTHORITY

13. The authority to participate in a JFO is derived from the CBSA's mandate, described in section 5 of the *Canada Border Services Agency Act*, to provide integrated border services that support national security and public safety priorities and facilitate the free flow of persons and goods, including animals and plants, which meet all the requirements under its program legislation.

BACKGROUND

14. The CBSA interacts on a daily basis with a number of partner law enforcement agencies. From time to time, in cases requiring long term or regular CBSA participation, a formal acknowledgement of the Agency's commitment to this participation through a JFO Agreement is required to clearly set out the essential elements of the participation.
15. CBSA participation in JFOs supports:
 - a. The Intelligence mandate to identify threats posed by people and goods through the acquisition and provision of timely, accurate, strategic, operational and tactical intelligence.
 - b. The Criminal Investigation mission to investigate and prosecute offences in contravention of the *Customs Act*, *Immigration and Refugee Protection Act*, and other legislation enforced by the CBSA including certain *Criminal Code* offences.
 - c. The Inland Enforcement mission to protect the safety and security of Canadian society, as well as to prevent abuse by those who would attempt to bypass the legal immigration process, through enforcement of

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Joint Forces Operations Policy

immigration legislation within Canada and to remove inadmissible individuals.

POLICY

16. All JFOs must be governed and managed according to a JFO Agreement.
17. All JFO objectives must be consistent with the CBSA's legislated mandate and respect all applicable legislation.
18. A completed JFO Assessment Form, and any relevant supporting documentation such as written requests for assistance from partner agencies, must be endorsed by a regional Director prior to completing a JFO WCA and approved by the Enforcement and Intelligence Operations Director General and the Enforcement and Intelligence Program Director General and presented to the Enforcement and Intelligence Program Management Table (PMT) for information.
19. All JFO Agreements must be completed prior to the start of JFO activities.
20. JFO Assessment Forms must include provisions to assess and measure the performance of the CBSA participation in the JFO against clearly defined expectations.
21. Information on the performance of active JFOs as measured against the objectives set out in the JFO Agreement and return-on-investment, shall be reviewed quarterly by the Enforcement and Intelligence PMT.
22. CBSA resources, equipment or personnel must only be used in a manner that is consistent with the terms of the JFO Agreement.
23. Protective and defensive equipment issued to officers is to be worn in accordance with the CBSA Arming policies, strategies and procedures.

ROLES AND RESPONSIBILITIES

PROGRAMS BRANCH

24. Director General, Enforcement and Intelligence Programs or delegate

As functional program authority for the CBSA's JFOs, the Director General is responsible for:

- a. Providing functional direction on the application of the policy;

- b. Interpreting applicable policy, legislation and jurisprudence;
- c. Setting priorities and performance targets;
- d. Conducting analysis and identifying gaps and program improvements;
- e. Reallocating resources as necessary to respond to changing priorities, risks, performance, service levels, expected workload and opportunities;
- f. Consulting stakeholders;
- g. Monitoring and maintaining the Joint Forces Operations Policy and any appendices to ensure that they meet the needs of the CBSA and comply with relevant legislation and jurisprudence;
- h. Jointly with the Director General, Enforcement and Intelligence Operations, reviewing and approving the regional recommendation on completed JFO Assessment Forms and any relevant supplementary documentation such as written requests for assistance from partner agencies, sent by regional senior management and providing the supported Assessment Forms to the Enforcement and Intelligence PMT for information.

25. Written Collaborative Arrangements and Agreements Unit – International and Partnerships Directorate

- a. Review and provide input to the development of new JFO Agreements;
- b. Maintain and archive all JFO Agreements.

OPERATIONS BRANCH

26. Director General, Enforcement and Intelligence Operations

- a. Ensuring implementation of this policy and any associated procedures or guidelines to ensure a nationally consistent program delivery;
- b. Ensuring collection and reporting to Programs Branch national data on the performance of the CBSA's joint forces operation activity on a quarterly basis;
- c. Recommending to the Responsible Director General, Programs Branch, amendments or updates to the Joint Forces Operations Policy and any appendices;

- d. Reporting to Programs Branch responsible Director General, any operational occurrences, issues or information which impacts the joint forces operation activity;
- e. Jointly with the Director General, Enforcement and Intelligence Programs, reviewing and approving the regional recommendation on completed JFO Assessment Forms, including any relevant supplementary documentation such as written requests for assistance from partner agencies, sent by regional senior management and providing the supported Assessment Forms to the Enforcement and Intelligence PMT for information.
- f. Appointing a national JFO coordinator.

27. National JFO Coordinator (Enforcement and Intelligence Operations Directorate)

- a. Reviewing all proposed JFO Assessments for compliance with this policy, alignment with Agency mandate and program priorities and providing recommendations to the requesting Director prior to initiation of the WCA process;
- b. Liaising with the WCA unit to coordinate the completion and registration of all new JFO Agreements;
- c. Providing policy and operational guidance to managers and Directors on matters related to JFOs to ensure national consistency;
- d. Consistent with internal CBSA initiatives, ensure that the benefit to the broader CBSA Enforcement and Intelligence Program is considered in design and implementation of the JFOs and promoting best practices across the CBSA;
- e. Compiling national data on the status and performance of JFOs and forwarding it to the Director General, Enforcement and Intelligence Programs on a quarterly basis.

28. Regional Directors General

- a. Ensuring implementation of this policy and any associated procedures or guidelines to ensure a nationally consistent program delivery;
- b. Assessing all proposed JFO Assessment Forms and Arrangements within their region for compliance with this policy, alignment with Agency mandate and program priorities and seeking approval of the completed Assessment Form from the Directors General of the Enforcement and

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Joint Forces Operations Policy

Intelligence Programs and the Enforcement and Intelligence Operations Directorates at NHQ prior to the initiation of the WCA process, and the commencement of JFO activities;

- c. Providing resources and access to training required to optimize CBSA participation in JFOs;
- d. Supporting the Enforcement and Intelligence Director to address any issues that hinder the performance of JFOs;
- e. Ensuring reporting to the National JFO Coordinator, any operational occurrences, issues or information which impacts the joint forces operation activity;
- f. Ensuring collection and reporting of performance data on all active JFOs in that region to the National JFO coordinator on a quarterly basis.

Enforcement and Intelligence Operations (Headquarters and Regions)

29. Enforcement and Intelligence Directors

- a. Consistent with internal CBSA initiatives, ensure that the benefit to the broader CBSA Enforcement and Intelligence Program is considered in design and implementation of the JFO;
- b. Reviewing all elements of the JFO Assessment Form with input from the JFO National Coordinator and recommending to the regional Director General prior to the commencement of the WCA process;
- c. Consulting and negotiating with JFO partners to ensure CBSA JFO requirements are understood and included in the WCA;
- d. Reviewing the JFO WCA, for completeness and with a focus on the CBSA's mandate and current priorities and recommending to the Director General;
- e. Ensuring ongoing oversight and management of all JFOs for which they are responsible;
- f. Ensuring collection and reporting of performance data via their Director General on all active JFOs under their responsibility to the National JFO coordinator on a quarterly basis.

30. Enforcement and Intelligence Managers

- a. Conducting ongoing oversight and management of all JFOs for which they are responsible;
- b. Collection and reporting of performance data on all active JFOs under their responsibility and providing to their Director;
- c. Identifying and coordinating all required CBSA equipment and personnel;
- d. Ensuring reporting to the National JFO Coordinator via their regional management, any operational occurrences, issues or information which impacts the joint forces operation activity;
- e. Consistent with internal CBSA initiatives ensure that the benefit to the broader CBSA Enforcement and Intelligence Program is considered in implementation of the JFO and making recommendations to their Director.

31. Enforcement and Intelligence Employees participating in the JFO

- a. Performing the activities that are within the legislated mandate of the CBSA, which are described in the JFO Agreement;
- b. Communicating to the responsible manager as soon as practicable, and at any time during the JFO, any potential misalignment between the legislated mandate of the CBSA and any element of the JFO operations;
- c. Communicating to the responsible manager as soon as practicable any failure to execute any of the CBSA responsibilities described in the JFO Agreement.

REFERENCES

CBSA Policy and Guide for the Management and Development of Written Collaborative Arrangements

CBSA Policy on Surveillance

CBSA Policy on Use of Force and Defensive Equipment

Part 3

SELECTION

Chapter 9

**PROCESSING INDIVIDUALS WHO TURN AROUND AT
LAND PORTS OF ENTRY**

13/07/18

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to conduct primary questioning in accordance with the provisions set out in the *Customs Act*, *Proceeds of Crime (Money Laundering) Terrorist Financing Act* (PCMLTFA) and the *Immigration and Refugee Protection Act* (IRPA), and in recognition of the limitations of those authorities respecting individuals who have not left Canada.

AUTHORITIES

Customs Act

Obligation to present, report and answer questions

2. Section 7.1 – States that any information provided to an officer in the administration or enforcement of this Act, the *Customs Tariff* or the *Special Imports Measures Act* or under any other Act of Parliament that prohibits, controls, or regulates the importation or exportation of goods must be true, accurate, and complete.
3. Section 11 – Obliges every person arriving in Canada to enter only at a customs office designated for that purpose that is open for business and present themselves to a border services officer (BSO) and to answer truthfully any questions asked by that officer in the performance of his or her duties under the *Customs Act* or any other Act of Parliament.
4. Section 12 – Requires persons and importers to make a report of all goods they are importing.
5. Section 13 – Obliges persons and importers to make a truthful declaration, answer questions truthfully, and present their goods for examination.
6. Section 32(1) – Requires importers to account for their goods and pay the applicable duties before they are released.

Examination of goods

7. Paragraphs 99(1)(a) - Authorizes officers to examine any goods (including conveyances) that have been imported anytime up to the time of release.
8. Paragraph 99(1)(e) – Authorizes officers to examine goods (including conveyances) where the officer suspects on reasonable grounds that the *Customs Act* or any Act of Parliament administered or enforced by the officer have been or might be contravened in respect of the goods.

9. Paragraph 99(1)(f) – Authorizes officers to stop, board, and search any conveyance, examine any goods carried thereon, and direct that the conveyance be moved to a CBSA office or other suitable location for any such search and examination where the officer suspects on reasonable grounds that the *Customs Act* or any Act of Parliament administered or enforced by the officer have been or might be contravened in respect of the conveyance or the goods.
10. Examinations conducted under the authority of paragraphs 99(1)(a),(b) and (c), which do not mention reasonable grounds, may therefore be conducted anytime up to the time of release of such baggage, goods or conveyances that are brought into Canada or are reported for export from Canada.
11. Section 99.1 – Authorizes officers to stop a person whom the officer has reasonable grounds to suspect has entered Canada without presenting himself or herself in accordance with subsection 11(1) within a reasonable time after the person entered Canada and question that person and examine their imported goods.

Immigration and Refugee Protection Act

12. Subsection 15(1) – Authorizes officers to proceed with an examination if a person makes an application to the officer in accordance with this Act or if an application is made under subsection 11(1.01).
13. Subsection 15(3) – Authorizes officers, if required, to board and inspect any means of transportation bringing persons to Canada, examine any person carried by that means of transportation and any record or document respecting that person, seize and remove the record or document to obtain copies or extracts and hold the means of transportation until the inspection and examination are completed.
14. Subsection 16(1) – Requires every person who makes an application to answer truthfully all questions put to them for the purpose of the examination and must produce a visa and all relevant evidence and documents that the officer reasonably requires.
15. Subsection 16(3) – Authorizes officers, if required, to obtain from a permanent resident or a foreign national who is arrested, detained, subject to an examination or subject to a removal order, any evidence — photographic, fingerprint or otherwise — that may be used to establish their identity or compliance with this Act.
16. Subsection 18(1) – Requires every person seeking to enter Canada to appear for an examination to determine whether that person has a right to enter Canada or is or may become authorized to enter and remain in Canada.

17. Subsection 55(2) – Authorizes officers to arrest and detain without a warrant, a foreign national, other than a protected person, who the officer has reasonable grounds to believe is inadmissible and is a danger to the public or is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister, or if the officer is not satisfied of the identity of the foreign national in the course of any procedure under this Act.

Proceeds of Crime (Money Laundering) and Terrorist Financing Act

18. Part 2 – Provides the CBSA the authority to administer and enforce Part 2 of the Act.
19. Subsection 12(1) – Provides the obligation for every person or entity referred to in subsection (3) to report to an officer, the cross border movement of currency or monetary instruments of a value equal to or greater than CAN\$10,000.
20. Subsection 12(4) – Provides the obligation to answer truthfully any questions asked by the officer in the performance of the officer's duties under Part 2 and to present currency or monetary instruments for examination.
21. Subsection 16(1) – Authorizes officers to stop, board and search any conveyance, examine anything in or on it and open or cause to be opened any package or container in or on it, in order to determine that there are currency or monetary instruments of a value equal to or greater than CAN \$10,000 for the purpose of subsection 12(1) and direct the conveyance to be moved to a customs office or other suitable place for the search, examination or opening.
22. Subsection 16(2) – Authorizes officers to search baggage, examine anything in it and open or cause to be opened any package or container in it, in order to determine that it contains currency or monetary instruments that are of a value equal to or greater than CAN\$10,000 for the purpose of subsection 12(1) and direct that baggage be moved to a customs office or other suitable place for the search, examination or opening.
23. Subsection 17(1) – Authorizes officers to examine any mail that is being imported or exported and open or cause to be opened any such mail that the officer suspects on reasonable grounds contains currency or monetary instruments of a value equal to or greater than CAN\$10,000 for the purpose of subsection 12(1).

Cross-Border Currency and Monetary Instrument Reporting Regulations

24. Establishes the threshold amount for currency reporting at CAN \$10,000 or its equivalent after conversion, the general manner of reporting, retention, the prescribed amount of penalties, and administrative details.

Duty Free Shop Regulations

25. Subsection 18(1) – States that duty free shop goods may be transferred only by sale to persons who are about to leave Canada.

Immigration and Refugee Protection Regulations

26. Section 28 – States that for the purposes of subsection 15(1) of the Act, a person makes an application in accordance with the Act by
- a) submitting an application in writing;
 - b) seeking to enter Canada;
 - c) seeking to transit through Canada as provided in section 35; or
 - d) making a claim for refugee protection.

The Canadian Charter of Rights and Freedoms

27. Section 8 – States everyone has the right to be secure against unreasonable search or seizure.
28. Section 9 – States everyone has the right not to be arbitrarily detained or imprisoned.

PURPOSE AND SCOPE

27. The purpose of this policy is to provide guidelines to Border Services Officers (BSOs) on:
- a) the questioning of persons who may not have left Canada regarding admissibility and goods; and
 - b) selecting and referring persons, goods, and conveyances for secondary examination, who may not have left Canada.

BACKGROUND

28. The physical layout of some ports of entry allows traffic bound for the United States (US) to turn around in between the CBSA office and the US Customs and Border Protection (USCBP) office, entering the primary inspection lanes on the Canadian side. In some cases this traffic will have physically left Canada, in other cases not. BSOs need to be aware of how this impacts their authorities under the *Customs Act*, the PCMLTFA and IRPA.

POLICY GUIDELINES

Person and goods have physically left Canada but were not processed by USCBP

29. If an individual has physically left the territory of Canada, the legal authorities under the *Customs Act*, PCMLTFA and IRPA apply as they would to a normal situation where a person and/or goods enter Canada after having been processed by USCBP.
30. Officers should ensure that they exercise all of the above authorities judiciously with respect to persons arriving in Canada. Such individuals may not have intended to leave Canada and therefore may not be in possession of required travel documents, or be confused as to why they have to answer questions.
31. In these instances, officers should complete primary as per regular processing procedures.

It is unclear whether or not the individual left Canada

32. Some individuals may not be aware of the physical location of the international border or the officer may not have noticed where, in terms of the physical border, the person turned around in between the CBSA office and USCBP.
33. In these instances, the legal authorities under the *Customs Act*, PCMLTFA and IRPA apply as they would to a normal situation where a person and/or goods enter Canada.
34. In these instances, officers should complete primary as per regular processing procedures.

Person states they have not left Canada but officer has reasonable grounds to suspect the person is not being truthful

35. This is different from the previous scenario in that there is an attempt by the individual to misrepresent their departure from Canada.
36. If this scenario occurs, the officer should take steps to verify the individual's claim. This may include requesting identification from the individual and asking questions.
37. The officer should make use of all available information (e.g. video surveillance footage, other staff who may have observed the individual or conveyance, etc.) to determine whether the individual left Canada.
38. Officers must record their grounds in their notebook and must be prepared to articulate these grounds if required.

39. If the suspicion remains, the officer will have the authority to examine the goods and vehicle under paragraphs 99(1)(e) and 99(1)(f) of the *Customs Act*, as long as the officer has reasonable grounds to **suspect** that an Act of Parliament has been contravened with respect to the goods or conveyance. In this scenario, leaving and re-entering Canada and misrepresenting that fact to an officer is a contravention of the *Customs Act*.
40. The officer is also authorized to conduct an examination of the person's conveyance and baggage under subsections 16(1) and 16(2) of the PCMLTFA, if the officer has reasonable grounds to **believe** that the individual has actually exported or imported currency or monetary instruments.
41. In addition, the officer is authorized to examine a person pursuant to subsection 18(1) of IRPA if the person is seeking to enter Canada. Evading an examination is a contravention of IRPA.
42. If the officer confirms or becomes otherwise satisfied that the individual has indeed not left Canada (or has not taken on persons or goods that are entering Canada), the traveller should be allowed to proceed immediately without being subject to further examination.

Individual turns around without physically leaving Canada

43. This section applies only to scenarios in which the officer is completely satisfied that an individual has turned around without physically leaving Canada.
44. In instances where a person and their goods do not cross the physical US border, and at no time were goods or people required to report to the CBSA taken aboard the conveyance, the person is not considered to be arriving in Canada and the goods (and/or currency) are not deemed imported. Therefore, there is no authority to conduct an examination (primary or secondary).
45. All that is authorized in this situation is a brief interaction to confirm that the above conditions regarding to the people and goods are met.
- 46.
- 47.

48.

49. Following this brief interaction, the person should be allowed to proceed immediately, unless the officer suspects a contravention under 99(1)(e) and 99(1)(f) of the *Customs Act* or a criminal offence is identified prior to or during this interaction.
50. Neither the PCMLTFA nor IRPA have a section equivalent to subsections 99(1)(e) and 99(1)(f) of the *Customs Act*. As such, officers can only refer a traveller to secondary under the PCMLTFA or IRPA if the individual has departed/is arriving in Canada. As this is not the case in scenarios where the officer is completely satisfied that the individual and goods are not arriving in Canada, no examination under the PCMLTFA or IRPA is authorized.
51. Under subsection 55(2) of IRPA, officers may arrest and detain foreign nationals, other than protected persons, if the officer has reasonable grounds to **believe** is inadmissible and a danger to the public or unlikely to appear for an examination, admissibility hearing, removal from Canada, or at a proceeding that could lead to a removal order.
52. In all instances of a referral, officers will need to notate and properly articulate the grounds which led to the referral.

Enforcement flags (lookouts, alerts, targets, etc.) displaying in IPIL when an individual turns around without physically leaving Canada

53. This section applies only to scenarios in which the officer is completely satisfied that an individual has turned around without physically leaving Canada.
54. As there is not sufficient information available at primary for officers to determine the reason for the enforcement flag, nor to confirm the traveller as the subject of the enforcement flag, an enforcement flag does not automatically constitute reasonable grounds to suspect or believe a contravention has occurred under one of the acts administered by the CBSA.
- 55.

56. Officers must record all relevant information in their notebooks, including the time of the occurrence, licence plate number of the domestic vehicle and the enforcement flag activity number.
57. When the person's information is removed from IPIL as described above, there will be no requirement to acquit the enforcement in secondary processing systems (ICES, GCMS, etc.).
58. The release of domestic travellers who may be the subject of an enforcement flag should not be considered a "missed" enforcement flag.
59. Should additional indicators be present which lead the officer to **suspect** a contravention under 99(1)(e) and 99(1)(f) of the *Customs Act* or a criminal offence is identified prior to or during this interaction, officers may refer the traveller as described in the "Individual turns around without physically leaving Canada" section directly above.
60. Should additional indicators be present which lead the officer to **believe** on reasonable grounds that a foreign national, other than a protected person, is inadmissible and a danger to the public or unlikely to appear for an examination, admissibility hearing, removal from Canada, or at a proceeding that could lead to a removal order, the officer may arrest and detain the individual under subsection 55(2) of IRPA. In the case of an IRPA arrest and detention, officers must complete all the required paperwork and document the case in GCMS.
61. In all instances of a referral, officers must record their grounds in their notebook and must be prepared to articulate these grounds if required.
62. Some enforcement flags may have an associated officer safety caution. As with a regular processing situation, the existence of an officer safety caution is an indicator which must be considered in the overall risk assessment when considering any potential use of force options when processing the traveller.
63. The overall risk assessment of any potential threat from a traveller, in addition to consideration of the officer safety caution, would include situational factors, officer's perception, and exhibited behaviour by the traveller as comprehended in the Incident Management Intervention Model.
64. Should officers form the reasonable grounds to suspect or believe it is necessary to draw or use their defensive equipment, they may do so in accordance with Agency policy, directives, standard operating procedures, and training.
65. As always, should force be used to manage an encounter, CBSA officers are required to complete a BSF586 Use of Force Incident Report, ensuring they clearly articulate the reasons for the need to apply force.

Officer powers authorities when an individual turns around without physically leaving Canada

66. Designated officers who during the normal course of their duties (including determining the admissibility of individuals who present themselves at primary) encounter *Criminal Code* offences, have the authority under section 163.5 of the *Customs Act* to deal with subjects involved with a *Criminal Code* violation, process them as per standard operating procedures and refer them to the police agency of jurisdiction.
67. These authorities are not affected by designated officers processing individuals who they determine have not left Canada.
68. As always, designated officers will not use their *Customs Act* authorities for the sole purpose of looking for evidence of *Criminal Code* offences under the *Criminal Code* or any other federal statute.
69. Designated officers will enforce the provisions of the *Criminal Code* or other federal statutes and will refer offenders to the police agency of jurisdiction for further processing and the laying of charges, should it be warranted.

Duty Free Shop Goods

70. Goods (whether domestically produced or imported) purchased at duty free shops (DFSs) are for immediate exportation and are not considered imported into the Canadian economy. Rather, they are held in-bond in the DFS where they are not formally accounted for and duties and taxes are not collected on them.
71. If a traveller has exited Canada with DFS goods, even if only momentarily, the goods are considered to be imported upon their return to Canada. In this case the DFS goods become subject to section 32(1) of the *Customs Act* and the CBSA has the authority to collect any duties and taxes owing.
72. If a person does not exit Canada and declares DFS goods that have not been exported, this constitutes a contravention of section 18(1) of the *Duty Free Shop Regulations* (DFSR), which states that DFS goods may only be sold to people leaving Canada.
73. The fact that DFS goods are entering the Canadian market without first being exported is, in and of itself, a contravention of section 18(1) of the DFSR. There does not have to be any onus on the part of the DFS or the traveller to generate this contravention.

74. Because the DFSR have been contravened, CBSA officers have the authority to examine the goods and conveyance under paragraphs 99(1)(e) and 99(1)(f) of the *Customs Act*.
75. Although technically a contravention of section 18(1) of the DFSR and subject to seizure, in such a circumstance, where the traveller declared the DFS goods, the individual should be given the choice of:
 - a) paying the duties and taxes owing;
 - b) exporting the DFS goods;
 - c) returning the goods to the DFS; or
 - d) abandoning the DFS goods to the Crown on a form BSF241.
76. Should a traveller provide inaccurate information relating to the DFS goods (e.g. denying they have purchased DFS goods when asked), the goods may be seized under section 110(1) of the *Customs Act*, as a contravention of section 7.1 of the *Customs Act*.
77. The Assessment and Licensing Unit should be notified of any recurring issues of travellers failing to export goods purchased at DFS since it indicates potential non-compliance with DFS Program requirements. The Assessment and Licensing Unit generic email address is:

ROLES AND RESPONSIBILITIES

Border Services Officers

78. Border services officers are responsible for adhering to this policy and procedures.

CBSA Port of Entry Managers and Superintendents

79. CBSA port of entry managers and superintendents are responsible for:
 - a) ensuring that this policy and procedures are adhered to at their port; and
 - b) providing direction and support to BSOs.

REFERENCES

Customs Act

Immigration and Refugee Protection Act

Proceeds of Crime (Money Laundering) and Terrorist Financing Act

Duty Free Shop Regulations

Immigration and Refugee Protection Regulations

The Canadian Charter of Rights and Freedoms

CUSTOMS ENFORCEMENT MANUAL

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 1

DETECTION TECHNOLOGY

14/09/07

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to use detection equipment to assist in the examination of imported or exported goods.

DEFINITIONS

2. Refer to Part 11, Glossary.

AUTHORITIES

Customs Act

3. Subsection 13(b) requires persons reporting imported goods to answer truthfully questions respecting the goods, present the goods, unload the conveyance and open and/or unpack any package or container.
4. Subsections 99(1)(a), (b), and (c) authorize officers to conduct examinations anytime up to the time of release of such goods, baggage, conveyances, or mail that are brought into Canada or anytime prior to their export from Canada.
5. Subsections 99(1)(d) and (e) allow officers to examine goods, baggage, or conveyances that have been released but are still in an area under CBSA control if they suspect on reasonable grounds that errors have been made in the declaration, value, or classification of the goods or a contravention has occurred.
6. Subsection 99(1)(f) authorizes officers to stop and board any conveyance, and search the conveyance or any goods it is carrying. The conveyance can be directed to be moved to a CBSA office or other suitable location for search and examination where the officer suspects on reasonable grounds that the Act or any Act of Parliament they administer or enforce has been or might be contravened in respect of the conveyance or the goods.
7. Section 99.1 authorizes officers to stop and question persons and examine their imported goods, if the officers have reasonable grounds to suspect the persons have entered Canada without presenting themselves to the CBSA.
8. Sections 111 and 112 provide for acquiring and executing a search warrant in order to conduct a customs examination away from a customs area or in places not subject to CBSA control.

Proceeds of Crime (Money Laundering) and Terrorist Financing Act

9. Subsection 16(1) authorizes officers to stop, board and search any conveyance, examine anything in or on it and open or cause to be opened any package or container in or on it, if the officer suspects on reasonable grounds that there are currency or monetary instruments of a value equal to or greater than the amount prescribed for the purpose of subsection 12(1) and direct the conveyance to be moved to a CBSA office or other suitable place for the search, examination or opening.
10. Subsection 16(2) authorizes officers to search baggage, examine anything in it, and open or cause to be opened any package or container in it, if the officer suspects on reasonable grounds that it contains currency or monetary instruments that are of a value equal to or greater than the amount prescribed for the purpose of subsection 12(1) and direct that baggage be moved to a CBSA office or other suitable place for the search, examination or opening.

PURPOSE AND SCOPE

11. The purpose of this policy is to provide information to CBSA officers using detection technology equipment and tools in the random examination of goods or to examine goods suspected to contain contraband or dangerous goods.

ROLES AND RESPONSIBILITIES

CBSA Officers

12. CBSA officers are responsible for:
 - a) complying with this policy and any other CBSA policies relevant to the enforcement program;
 - b) determining through indicators when the use of detection technology equipment is appropriate;
 - c) being vigilant in protecting the health and safety of themselves, other Border Services Officers and/or the public when operating detection technology equipment;
 - d) reporting all detection technology repair and maintenance related issues to the National Detection Technology Help Desk at

- e) recording and reporting accurate monthly usage statistics to the Regional Detection Technology Coordinator in a timely manner;
- f) taking the prescribed and, in many cases, mandatory training (i.e. x-ray, gamma-ray, ion mobility spectrometry) before operating detection technology equipment and maintaining these skills through regular equipment usage and online refresher courses; and
- g) all drivers of CBSA large vehicles (Mobile VACIS, COMET and Scan Trailer) must successfully complete the CBSA or provincially mandated driver training prior to driving the CBSA large vehicles.

CBSA Superintendents and Chiefs

13. CBSA superintendents and chiefs are responsible for:

- a) ensuring compliance with this policy and any other CBSA policies relevant to the enforcement program;
- b) approving the request to use the equipment if applicable;
- c) ensuring Border Services Officers receive the necessary and, in many cases, mandatory training (i.e. x-ray, gamma-ray, ion mobility spectrometry) in a timely manner before operating detection technology equipment;
- d) ensuring that all drivers of CBSA large vehicles (Mobile VACIS, COMET and Scan Trailer) have successfully completed the CBSA or provincially mandated driver training prior to driving the CBSA large vehicles;
- e) ensuring Border Services Officers maintain their operator skill levels through regular equipment usage and online refresher training;
- f) ensuring all detection technology repair and maintenance related issues are reported to the National Detection Technology Help Desk at
- g) ensuring all detection technology requests, other than repair and maintenance, are channelled through the Regional Detection Technology Coordinator;
- h) ensuring accurate monthly usage statistics are recorded and provided to the Regional Detection Technology Coordinator in a timely manner;
- i) taking appropriate corrective action on any policy breaches;

- j) providing advice and guidance to officers working under their direction with respect to the application of this policy;
- k) consulting with regional and/or Headquarters officials and seeking advice and guidance, as required; and
- l) providing feedback and making recommendations to the program area responsible for these guidelines on the administration/application of these guidelines.

Regional Detection Technology Coordinators

14. Regional Detection Technology Coordinators are responsible for:

- a) ensuring the region is aware of the compliance requirements with this policy and any other CBSA policies relevant to the enforcement program;
- b) coordinating and submitting the Regional Detection Technology annual and adhoc Business Case submissions;
- c) assisting in the coordination of equipment allocation, relocation and removal;
- d) collecting and reporting accurate monthly usage statistics to the Detection Technology Section, Enforcement Branch in a timely manner;
- e) assisting in the coordination of detection technology field tests and evaluations; and
- f) acting as the single-point-of-contact between the Regions and the Detection Technology Section for all detection technology matters with the exception of repair and maintenance requests.

Regional Detection Technology Instructors

15. Regional Detection Technology Instructors are responsible for:

- a) ensuring the region is aware of the compliance requirements with this policy and any other CBSA policies relevant to the enforcement program;
- b) successful completion of the appropriate detection technology train-the-trainer before providing end-user training in the Regions;
- c) coordination and delivery of approved detection technology training to regional end-users before equipment usage;

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Detection Technology

- d) maintaining instructional and detection technology knowledge and skill levels;
- e) promoting the online detection technology refresher courses; and
- f) reporting all training activities to the Enforcement Branch Training Section.

Detection Technology Repair and Maintenance Technicians

16. Detection Technology Repair and Maintenance Technicians are responsible for:
- a) ensuring compliance with this policy and any other CBSA policies relevant to the enforcement program;
 - b) maintaining and repairing detection technology equipment;
 - c) only responding to requests for repair and maintenance that have been reported to the National Help Desk;
 - d) conducting scheduled preventative maintenance visits;
 - e) identifying equipment problems and recommending solutions; and
 - f) maintaining sufficient on-hand inventory to meet anticipated demands.

Enforcement Branch

17. The Enforcement Branch is responsible for:
- a) monitoring compliance with this policy and the related procedures;
 - b) receiving feedback and recommendations from the field and addressing concerns;
 - c) developing and maintaining appropriate policy as required;
 - d) designing, developing and delivering all detection technology equipment training;
 - e) maintaining a Preventative Maintenance Program that includes a National Detection Technology Help Desk at _____ and timely repair and maintenance by qualified Detection Technology Maintenance and Repair Technicians in the Regions;

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Detection Technology

- f) administering and maintaining the following detection technology programs (in conjunction with the Laboratory and Scientific Services Directorate of the Innovation, Science and Technology Branch):
 X-Ray and Gamma Ray (Scan Trailer, Vehicle and Cargo Inspection Systems [VACIS]);
 Ion Mobility Spectrometry (Ionscan, Sabre, Itemizer);
 Small Detection Tools (Fibrescope, Density Meter);
 Remote Operated Vehicles (ROV);
 Chemical, Biological, Radiological/Nuclear, and Explosive (CBRNE);
 Radiation detection and Safety; and
 Research and Development (R&D) projects
- g) identifying and evaluating new and emerging detection technologies and equipment.

POLICY AND GUIDELINES

- 18. This policy applies to all CBSA officers and all modes of transportation.
- 19. The Detection Technology Section (DTS) has information on the various detection technologies supported by CBSA and their associated policies and procedures posted on the Enforcement Branch web site. It can be found at:

http://infozone/cbsa-asfc/eb-dgel/about-sujet/epd-dpel/bed-delf/dts_sdc_e.asp

- 20. Online detection technology refresher training, which includes but is not limited to radiation safety, x-ray and gamma ray equipment, ion mobility spectrometers, fibrescopes and density meters, will be accessible via a website currently in progress.

REFERENCES

- 21. *The Customs Act*

CBSA ENFORCEMENT MANUAL

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 3

PERSONAL BAGGAGE, GOODS AND CONVEYANCE EXAMINATION POLICY AND PROCEDURES

15/05/17

EN Part 4 Chapter 3 Personal Baggage, Goods and Conveyance Examination

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to physically examine personal baggage, goods and conveyances upon arrival in and departure from Canada when deemed necessary and in accordance with applicable legislation.
2. All examinations will be conducted in strict adherence to our core values; examinations will be proficient and discrete to the extent possible with respect to clients and their property.

DEFINITIONS

3. Refer to Part 11 – Glossary.

AUTHORITIES

Customs Act

4. Subsection 2(1) – “goods” for greater certainty, includes conveyances, animals and any document in any form.

Obligation to Answer Questions and Present Goods

5. Section 13 – States that every person who reports goods under section 12 or is stopped by an officer under section 99.1 shall:
 - a) answer truthfully any questions asked by the officer with respect to the goods; and
 - b) if requested by an officer, present the goods, unload the conveyance or open or unpack any package or container that the officer wishes to examine.

Customs Controlled Areas

6. Section 11.2 – Authorizes the designation of areas as customs controlled areas.
7. Section 11.3 – Only persons holding a ministerial authorization or prescribed persons can be allowed by the owner or operator of a facility to gain entry or access to customs controlled areas.

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Examination of Goods

8. Paragraphs 99(1)(a) and (b) - Authorizes officers to examine any goods (including conveyances) or mail that have been imported anytime up to the time of release.
9. Paragraphs 99(1)(c) and (c.1) – Authorizes officers to examine any goods (including conveyances) that have been reported for export and any mail anytime up to the time of exportation.
10. Paragraphs 99(1)(d), and (d.1) - Authorizes officers to examine any goods (including conveyances) if the officer suspects on reasonable grounds that an error has been made in with respect to the tariff classification, value for duty, quantity, or origin of goods that have been accounted for.
11. Paragraph 99(1)(e) – Authorizes officers to examine goods (including conveyances) where the officer suspects on reasonable grounds that the Customs Act or any Act of Parliament administered or enforced by the officer have been or might be contravened in respect of the goods.
12. Paragraph 99(1)(f) – Authorizes officers to stop, board, and search any conveyance, examine any goods carried thereon, and direct that the conveyance be moved to a CBSA office or other suitable location for any such search and examination where the officer suspects on reasonable grounds that the Customs Act or any Act of Parliament administered or enforced by the officer have been or might be contravened in respect of the conveyance or the goods.
13. Examinations conducted under the authority of paragraphs 99(1)(a),(b) and (c), which do not mention reasonable grounds, may therefore be conducted anytime up to the time of release of such baggage, goods or conveyances that are brought into Canada or are reported for export from Canada.
14. If the baggage, goods or conveyance have been released but are still in an area under the CBSA's control, they may be examined. However, paragraphs 99(1) (d), (d.1), (e) and (f) require that the officer suspect on reasonable grounds that errors have been made in the declaration, classification, value or origin or a contravention has occurred. The officer must be prepared to articulate their grounds.
15. Subsection 99(2) – Prohibits officers from opening or causing to be opened any mail that weighs 30 grams or less unless the person to whom it is addressed consents or the person who sent it has completed and attached to the mail a label in accordance with article RE 601 of the *Letter Post Regulations* of the Universal Postal Convention.

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16. Subsection 99(3) – Authorizes officers to cause mail that weighs 30 grams or less to be opened in the officer's presence by the person to whom it is addressed, the person who sent it or a person authorized by either of those persons.
17. Section 99.1 – Authorizes officers to stop a person whom the officer has reasonable grounds to suspect has entered Canada without presenting himself or herself in accordance with subsection 11(1) within a reasonable time after the person entered Canada and question that person and examine their imported goods

Note: Examples of when officers might use this power are when monitoring a CBSA office after hours and at alternate reporting stations. This section also gives authorization to the Royal Canadian Mounted Police (RCMP) to deal with persons encountered away from CBSA ports of entry (POE).

18. Sections 111 and 112 – Provide for acquiring and executing a search warrant in order to conduct a customs examination away from a customs area or in places not subject to Customs control.
19. Subsection 115(1) – States officers may make one or more photocopies for evidentiary purposes of any record, book or document that is seized under this Act.

Note: Photocopying documents constitutes a seizure within the meaning of section 8 of the Charter of Rights and Freedoms.

The Canadian Charter of Rights and Freedoms

20. Section 8 – States everyone has the right to be secure against unreasonable search or seizure.
21. In *R. v. Simmons*, the Supreme Court of Canada held that for persons entering Canada the degree of personal privacy reasonably expected at the border is lower than it is in most situations. It held that questioning and searches performed by officers are reasonable based on a standard of reasonable grounds to "suspect" and are considered a legal delay and not a detention. It divided the types of searches that officers perform into three categories based on the Charter issues that these searches raise. The first category of search involves the routine questioning of persons arriving in Canada, the inspection of baggage, pockets, wallets, and purses, and the pat down of the outer layers of clothing. The Court viewed these as part of routine processing, which does not raise *Charter* concerns.

Note: Refer to Part 6, Chapter 6, Personal Search for the second and third category of searches.

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22. The Supreme Court of Canada in *R. v. Monney* re-affirmed the decision of *R. v. Simmons* and held that the types of searches that customs officers perform are divided into three categories based on the *Charter* issues that these searches raise.
23. In *R. v. Jacoy*, the Supreme Court of Canada held that examinations for the most part are to be conducted systematically and progressively, with increasing intensity as circumstances warrant, which include referrals for examination based on intelligence.

Proceeds of Crime (Money Laundering) and Terrorist Financing Act

24. Subsection 12(1) – Requires every person or entity referred to in subsection (3) to report to an officer, in accordance with the regulations, the importation or exportation of currency or monetary instruments of a value equal to or greater than CAN\$10,000.
25. Subsection 16(1) – Authorizes officers to stop, board and search any conveyance, examine anything in or on it and open or cause to be opened any package or container in or on it, in order to determine that there are currency or monetary instruments of a value equal to or greater than CAN \$10,000 for the purpose of subsection 12(1) and direct the conveyance to be moved to a customs office or other suitable place for the search, examination or opening.
26. Subsection 16(2) – Authorizes officers to search baggage, examine anything in it and open or cause to be opened any package or container in it, in order to determine that it contains currency or monetary instruments that are of a value equal to or greater than CAN\$10,000 for the purpose of subsection 12(1) and direct that baggage be moved to a customs office or other suitable place for the search, examination or opening.
27. Subsection 17(1) – Authorizes officers to examine any mail that is being imported or exported and open or cause to be opened any such mail that the officer suspects on reasonable grounds contains currency or monetary instruments of a value equal to or greater than CAN\$10,000 for the purpose of subsection 12(1).
28. Subsection 17(2) – Prohibits officers from opening or causing to be opened any mail that weighs 30 grams or less unless the person to whom it is addressed consents or the person who sent it consents or has completed and attached to the mail a label in accordance with article 116 of the *Detailed Regulations* of the Universal Postal Convention.

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29. Subsection 17(3) – Authorizes officers to cause mail that weighs 30 grams or less to be opened in the officer's presence by the person to whom it is addressed, the person who sent it or a person authorized by either of those persons.

PURPOSE AND SCOPE

30. The purpose of this policy is to provide guidelines to officers on the examination of personal baggage, goods and conveyances.
31. This policy also clarifies procedures when pockets, purses and wallets are searched for evidence and when personal papers and journals are examined.
32. This policy applies to all CBSA personnel.

POLICY GUIDELINES

Point of Finality

33. Officers will ensure the point of finality has been reached prior to undertaking any examination of personal baggage, goods or conveyances.

Note: Refer to Part 3, Chapter 3, Reporting, Questioning and Referral Policy and Procedures for more information pertaining to reaching the point of finality.

Reasons to Examine

34. Examinations of personal baggage, goods and conveyances will be conducted if it is necessary to:
- a) verify or determine that a person and their baggage, goods and conveyance comply with all CBSA administered laws and regulations (i.e. declaration verification, tariff classification, valuation, random referrals);
 - b) conduct examinations of identified persons, baggage, goods and conveyances such as those selected by enforcement systems or by way of an alert or lookout; and
 - c) confirm or negate officers' suspicions based on reasonable grounds and indicators of non-compliance.

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Note: If referring a person to secondary who is deemed to be of high-risk, the primary officer must ensure that officers in secondary are informed of this risk. Accordingly, they should communicate their concerns orally, by radio or telephone prior to the person's arrival at secondary in accordance with local procedures and lookout information. Refer to the CBSA Best Practice Guide Cover and Concealment for High-Risk

Conduct

35. All examinations are to be conducted in a courteous and professional manner in accordance with the CBSA Code of Conduct.

Note: Professional and courteous conduct extends to selecting, conducting and reporting of examinations, as well as responses to inquiries by interested parties on examination matters, in addition to the treatment and respectful handling of goods.

36. Officers will not respond in kind to individuals who may be upset and/or hostile about having their goods, baggage or conveyance examined.
37. All examinations will be conducted in a thorough, methodical and proficient manner.

Health and Safety

38. When conducting examinations, officers will take measures to ensure their own health and safety as well as that of fellow officers and the public.
39. When examining conveyances, officers will ensure that they are turned off, cannot be moved and that the keys are removed from the ignition. In addition, officers will require that all persons in the conveyance exit it and stand at a safe distance until the examination is completed.

Note: Discretion must be used when persons with mobility impairment, seniors, infants and sleeping children are involved.

40. During examinations, officers must be aware of the danger of needles, broken glass, razor blades, knives and other sharp or pointed objects, exhaust fumes and the possible high temperatures associated with engine and exhaust components. Officers will not freely run their hands in pocket compartments or visually limited areas of baggage and conveyances without first conducting a visual inspection.

Note: The use of detection technology tools such as inspection mirrors and flashlights, fibscopes, probes and/or X-ray equipment may assist in

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examining areas of baggage and conveyances that do not lend themselves easily to visual inspections.

41. The CBSA will support decisions to tactically reposition at any point in a situation and/or to elicit aid when an officer perceives an undue risk to their safety, that of another officer and/or a member of the general public.
42. Officers will take the necessary preventative measures by wearing appropriate equipment, such as gloves, goggles, breathing masks or other appropriate protective equipment, to protect their health and safety during examinations

General

43. Personal baggage, goods and conveyances will be examined when deemed necessary at their point of entry or departure.
44. Officers will not be deterred from undertaking an examination based on a persons' objections.
45. Where a person appears upset or acts hostile, officers should record details in their notebook such as the person's actions, statements and physical condition. It is also important to record times and names of any witnesses to an incident.
46. Officers may use detection technology equipment and tools, including detector dog teams, to assist them in the examination of personal goods, baggage and conveyances when deemed appropriate.
47. Officers should familiarize themselves with indicators, concealment methods and other related information by reading intelligence bulletins, alerts and other relevant publications available.
48. Persons will normally be allowed to view the examination of their goods baggage and conveyance but will be kept at a safe distance to avoid any intentional or incidental interference with the examination.
49. Officers may require residents of Canada to establish the origin of their goods when they appear new, of foreign origin or there are indicators that the goods are being unlawfully imported.
50. In instances where the officer has established that the goods are of foreign origin (e.g. physical or documentary evidence such as markings, labels, or receipts; statements made by the person; or information received from intelligence sources) and the person is unable to provide proof of domestic

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origin or of lawful importation, enforcement action (e.g. seizure) may be initiated.

Note: Refer to Part 5, Chapter 2, Travellers Seizure and Ascertained Forfeiture Policy and Procedures.

51. Regardless of the type of referral, officers must ensure each examination is well-focused and be aware of the possibility that a contravention that is unrelated to the reasons for the referral may exist.

Note: Refer to Part 3, Chapter 3, Reporting, Questioning, and Referral Policy and Procedures for information on referral types.

52. Officers should also observe a person's reaction during the examination, and be alert to any unusual actions and behaviours which may provide initial or additional indicators to suspect that unlawfully imported goods may be present.
53. The detection of indicators as well as the discovery of evidence or unlawfully imported goods in the course of the examination may contribute to the establishment of reasonable grounds to progress to a more detailed exam.
54. Examinations will conclude when suspicions have been negated or no grounds exist to suspect that further examination would uncover unlawfully imported goods.
55. All goods discovered during an examination should be treated as potential evidence.
56. When the examination is the result of a lookout, the officer will complete the examination report in the Integrated Customs Enforcement System (ICES).
57. Officers should forward examination observations and interactions that they believe may be of use to Enforcement and Intelligence by way of the Occurrence Reporting System (ORS).

Note: For non-automated ports the Examination Report must be completed manually.

Pocket, Purse, and Wallet Examinations

58. Although, according to the Supreme Court of Canada, pocket, purse and wallet examinations are part of a "routine examination", they will not be conducted as a matter of routine, but will be performed as required based on indicators observed by the examining officer.

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Note: Officers must not confuse pocket searches as defined in these policies and procedures with frisks for officer safety as described in Use of Force training and Part 6, Chapter 1, Arrest and Detention Policy and Procedures.

59. Where indicators exist or undeclared or falsely reported goods are discovered, officers are justified in performing searches for evidence in pockets, purses, wallets, envelopes or any other reasonable container to discover evidence in the form of receipts, goods, or references to the goods discovered.
60. Pocket, purse and wallet examinations will only be conducted when in the officer's judgement it is safe to do so (i.e. the person is cooperative).
61. All examinations of pockets, purses and wallets should be carried out with as much discretion and privacy as possible, as they are more personal in nature than baggage examinations.
62. In the case of pocket examinations, coats, jackets and pant pockets should be turned out by the person.
63. Where pockets cannot be turned out as in the case of cargo, hidden, or security pockets, officers may confirm that they are empty by patting the pocket area.

Note: Touching a person to detect undeclared items, other than patting the pocket area, is considered to be part of a personal search and therefore the procedures in Part 6, Chapter 6, Personal Search must be followed (i.e. the person must be under arrest or detention).

64. Where it is operationally viable, these types of examinations will be conducted in the presence of another officer to safeguard against any unwarranted allegations of wrongdoing and for officer safety.

Note: Where possible, an officer of the same sex as the person being examined should conduct searches of pockets, purses and wallets.

65. Where a second officer is not available, officers will not touch a person of the opposite sex but will conduct an examination of purses and wallets and visually inspect those pockets that can be turned out or examined without touching the person (e.g. outside jacket pockets).
66. Officers will record the details of all pocket, purse and wallet examinations in their notebook in order to be ready and able to clearly articulate the reasons for conducting this type of examination.

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Outer Clothing Examination

67. Under the *R vs Simmons* decision, the Supreme Court of Canada held that for persons entering Canada, the degree of personal privacy reasonably expected at the border is lower than it is in most situations. Searches performed by CBSA officers are reasonable based on a standard of reasonable grounds to “suspect”.
68. An officer may ask routine questions of persons entering Canada, inspect baggage, pockets, wallets and purses, and pat down outer clothing. The Court viewed these as routine processing, which does not raise Charter concerns.
69. Outer layers of clothing include items that when removed, could not reasonably be expected to expose the person in a manner considered inappropriate. For example, an officer may request the removal of hats, coats or footwear. The removal of such items must be relative to the suspected offence and not considered to be embarrassing.
70. Such articles as turbans, wigs and religious items will not normally be considered “outer clothing” for the purposes of this section. Officers will not request the removal of these articles as a matter of routine. The removal of these articles, and other similar items, could be considered demeaning to the person wearing them and not without stigma. The removal of such items must be relative to the suspected offence.
71. Searches of outer clothing may involve asking the person to remove the contents of their pockets and, when necessary, the officer patting the outermost layer of clothing to ensure that the pockets are empty and that no additional pockets exist. In addition, the officer may request that an outer layer of clothing be removed.
72. The officer must be able to articulate reasons for advancing a search to this extent.
73. When a person refuses to comply with an officer’s request to examine an article of outer clothing for routine purposes (i.e. modesty or culture) the officer will not compel the person to do so.

Note: Where reasonable grounds exist to suspect that the person is concealing unlawfully imported goods “on or about his person”, an officer may perform a personal search. Refer to Part 6, Chapter 6, Personal Search Policy and Procedures.

74. Searches of the outer most layer of clothing to uncover evidence should not be contemplated if an officer has health and safety concerns.

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75. A search of the outer clothing layers and a frisk search for officer safety are not one and the same. Each has its own distinct purpose and legal authorization. It is the responsibility of the officer to determine what type of search /examination is appropriate in each situation and proceed accordingly.
76. Where possible, an officer of the same sex as the person being examined should conduct searches of outer clothing.
77. When requesting the removal of outer clothing layers for examination, officers should take persons to as private a location as the secondary area allows.
78. In the case of jackets and coats, officers must question persons to ensure that they are wearing appropriate clothing under the outer layer prior to requesting its removal.
79. Officers will record the details of all outer clothing examinations in their notebook in order to be ready and able to clearly articulate the reasons for conducting this type of examination.

Mandatory Referral Examinations

80. Persons referred to secondary for mandatory reasons, such as duty payment or form completion, will not have their baggage, goods or conveyance examined as a matter of routine.

Selective Referral Examinations

81. Examinations as a result of a selective referral may be more comprehensive than a cursory examination of baggage, goods and conveyances.
82. Examinations should include a methodical inspection of all baggage.
83. Vehicle examinations should include inspection of the following areas:

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Note: Refer to Appendix A - Passenger Vehicle Examination Requirements for suggested systematic approach.

Note: Minimum examination standards are not intended to limit the officer from examining the vehicle in a manner as the officer deems required.

Random Referral Examinations

84. Random referrals enable the CBSA to establish a compliance baseline to compare the effectiveness of other referral types, to validate existing risk indicators and identify potential new trends and indicators of non-compliance for refining targeting, and to act as a deterrent to those who may wish to violate Canada's border legislation.
85. Standardized random referral examination requirements are necessary to ensure a thorough, methodical, and proficient examination process in addition to improving confidence in the results of these examinations. Examinations of random referrals are compulsory.
86. System generated random referrals are compulsory and only a Superintendent or higher authorization may override such examination in exceptional circumstances only.
87. Examination of vehicles as a result of a random referral must be undertaken in accordance with the minimum standards outlined in Appendix A - Passenger Vehicle Examination Requirements.
88. For all random referral examinations of personal baggage, officers must, at a minimum, verify the traveller's declaration by opening and conducting a progressive examination on all baggage and carry on items belonging to a traveller that is a system generated random referral. The level of the examination's intensity will increase if indicators of non-compliance are revealed.

Intensive Examinations

89. Officers will conduct systematic and intensive examinations of personal baggage, goods and conveyances when they are the subject of a lookout or a target (unless the instructions in the lookout or target dictate otherwise), or when the officer forms the reasonable grounds to suspect that a contravention has occurred based on the observation of a multiplicity of indicators.
90. Whenever possible, prior to proceeding with an examination that may involve disassembling, dismantling, or damaging baggage, goods or conveyances, the officer will consult with their superintendent. Where this is

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not possible or not practical, the superintendent is to be notified of the examination and results as soon as possible.

91. Officers must have reasonable grounds and must be able to clearly articulate such grounds before cutting, drilling, and/or dismantling is undertaken during an examination.
92. Officers must keep detailed notebook entries of intensive examinations as they may be required to state the reasonable grounds more precisely than for lower intensity examinations.

Examination of Personal Papers and Journals

93. Personal papers and journals will not be reviewed unless there is reason to believe that the papers or journals contain receipts for goods, refer to the acquisition of the goods or may afford evidence of an offence.
94. Officers will only examine personal papers such as private correspondence and journals when it is substantiated that there has been a contravention of the Customs Act.

Note: "Examining personal papers and journals" for evidence contained therein and "reading personal papers or journals" are not one and the same.

95. Officers will not normally open letters or packages addressed to/from a lawyer's office to/from individuals or entities that clearly contain only documents, as the documents are potentially privileged.
96. Solicitor/client privilege applies to any record of confidential communication between lawyers and clients where legal advice or assistance was sought, provided or otherwise involved. Documents, electronic or otherwise, which are protected by solicitor/client privilege, are to be treated with sensitivity. The privilege includes information gathered to formulate legal advice, such as lawyer's working papers, memos and files. This privilege applies to clients. Lawyers carrying these communications are duty-bound to protect confidentiality and must assert this privilege on the client's behalf.
97. Documents may be retained and copied as evidence of a contravention if they are clearly not subject to solicitor-client privilege (e.g., invoices). Where there is a suggestion of any degree the documents are subject to privilege, the documents should be sealed and either returned or sealed in an evidence bag **without being examined or read** and set aside for review by a court for confirmation of privilege.
98. Packages containing passports may be examined as these are not considered documents subject to solicitor-client privilege.

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99. Unreported, falsely reported or illicit goods discovered within letters or packages between lawyers' offices and individuals or entities may be removed and dealt with in accordance with seizure and Administrative Monetary Penalty System (AMPS) policies.

Note: additional information on the examination of solicitor/client privileged information is contained in the Immigration, Refugee and Citizenship Canada ENF 12 Search, Seizure, Fingerprinting and Photographing, and in ENPart 4, Chapter 12 Postal Examination.

Photocopying and Electronic Scanning of Personal Papers and Journals

100. Under no circumstances are documents of any nature unrelated to the administration or enforcement of the Customs Act to be photocopied unless they are seized for some other purpose under lawful authority, or permission to photocopy the document is received from the owner or person in possession of the document. For example, personal identification of persons entering Canada may not be photocopied and passed to the police for intelligence purposes. In all instances, individuals are to be advised when documents are photocopied.
101. Officers will photocopy or electronically scan only those passages of records, books, documents or items of relevance to a contravention.
102. If documents are found that are believed to be related to seized goods, officers will photocopy or electronically scan the pertinent portions and certify them as being true copies of the originals, provided that the copies are clearly legible and the officer is satisfied the matter will not result in the prosecution of a person. Otherwise, the originals will be held.
103. If the original documents are held, officers will provide the person with a receipt (Form E352 – Evidence Seizure Receipt) and photocopies of the original documents, and advise them the originals will be returned when the case is finalized.

Note: If copying facilities are not available, officers will advise the person that copies will be provided as soon as possible.

Examination Damages

104. Officers will take photographs before and after examinations when it is likely there will be a complaint as a result of conducting an examination, there is pre-existing damage, they suspect that damage may be caused as the result of an examination or they are going to dismantle or remove

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permanent fixtures or parts, or drill, cut or break an item to determine if it is concealing goods.

Note: Photographs taken prior to examination will record any existing damage. Photographs taken after examination will document the extent of the damage caused, if any.

105. Examining officers will photograph any unexpected accidental damage to personal baggage, goods or conveyances resulting from an examination.
106. In cases of pre-existing damage or when damage is caused by an examination, officers will record all of the relevant information in their notebook.
107. When an examination causes damage, officers will prepare a report for management indicating the nature of the damage (e.g. scraped, broken, crushed, etc.), its extent and its suspected or actual cause.

Examination Related Costs

108. The CBSA may pay for affected goods to be brought back to their original state or will make monetary amends when damages have occurred as a result of an examination that is non-resultant.
109. The CBSA will not normally pay for damages to baggage, goods or conveyances when they are or have been used in contravention of and seized under the Customs Act. Goods seized by the CBSA belong to the Crown from the moment of seizure.

Note: The regulations and policy for handling damage claims against the Crown are contained in Chapter 19, Finance Volume, Comptrollership Manual.

ROLES AND RESPONSIBILITIES

CBSA Officers

110. CBSA officers are responsible for:
 - a) adhering to this and any related policy and procedures; and
 - b) maintaining in safe and good working order all contraband detection equipment used in examinations.

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CBSA Port of Entry Managers and Superintendents

111. CBSA port of entry managers and superintendents are responsible for:

- a) ensuring that the policy and procedures relative to the examination of personal baggage, goods and conveyances are adhered to at their port;
- b) providing direction and support to officers; and
- c) taking appropriate corrective action on policy and procedure breaches.

CBSA Enforcement and Intelligence Programs Directorate

112. CBSA Enforcement and Intelligence is responsible for:

- a) developing, modifying, and approving policies related to the Enforcement and Intelligence Program;
- b) monitoring adherence with Enforcement and Intelligence policy; and
- c) providing guidance to regional operations on intelligence related issues such as current trends and concealment methods.

Programs Branch - Traveller Programs Directorate

113. Traveller Programs Directorate is responsible for:

- a) developing, implementing, modifying and approving all policies and procedures related to the examination of personal baggage, goods and conveyances;
- b) monitoring adherence to this policy and procedures by the regions; and
- c) providing guidance and support to the regions on the examination of personal baggage, goods and conveyances as required.

PROCEDURES

General

114. Before conducting an examination, officers should confirm the existing primary report and ask all persons what goods make up the value reported. For example, if a person has reported \$100 worth of goods after an absence of 48 hours, it would be appropriate to ask the following:

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“You have reported that you were absent from Canada for 48 hours and that you are importing goods worth \$100. What are the goods that you are importing and what are their individual values?”

115. Ask the person(s) to identify their baggage, if they are aware of the contents and if they packed it themselves.

116. Ask the person(s) to place any suitcases, packages or containers on the secondary counter and to open them.

Note: In the case of baggage, it will suffice to have a person present, unlock, unzip or unclasp their suitcase(s) for examination. The officer will then remove what clothing or goods are necessary for the examination.

117. Take any necessary health and safety precautions (i.e. wearing of gloves, goggles, masks etc.).

118. Conduct a thorough, methodical and proficient examination of any baggage, goods and conveyance based on the level of intensity dictated by the referral and any indicators that have been observed.

119. Ask persons clarifying questions, if necessary.

120. Watch for reactions and listen to any comments made by involved persons.

121. Arrest and remove any person from the area who you have reasonable grounds to believe is intentionally obstructing or hindering an examination.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures.

122. When the officer is satisfied that the goods and conveyance match the persons' report, the officer will advise the person(s) that they are free to leave or where they must go to complete further processing. The traveller is responsible for re-packing his luggage. As a common courtesy, the officer should offer to assist travellers with the re-packing of bags once the contents have been inspected.

123. Progressively intensify the level of examination when indicators exist that lead to reasonable grounds to suspect that baggage, goods or a conveyance contains contraband, undeclared, or falsely reported goods or when contraband, undeclared or falsely reported goods or evidence is discovered.

124. In cases where undeclared goods are discovered, continue the examination until satisfied that all undeclared goods and evidence have been found.

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125. Where an intensive examination is required, examine all compartments in the conveyance,

126. Utilize detection technology equipment (e.g., Ionscan, X-ray, probe, etc.) and any other appropriate equipment and tools (i.e., mirrors, screwdrivers, ratchets, etc.) to verify or negate suspicions.

Note: Refer to Part 4, Chapter 1, Detection Equipment Policy and Procedures.

127. If available, utilize detector dog teams to verify or negate suspicions.

Note: Refer to Part 4, Chapter 1, Detection Equipment Policy and Procedures and the Detector Dog Service Operations Manual.

128. Immediately and discreetly take steps to ensure control is maintained over the goods, conveyance and any persons involved, and alert the superintendent if you suspect or discover the presence of illicit contraband or that some other serious infraction is being committed.

129. If officers discover illicit contraband commodities, they will immediately arrest, advise and caution any suspect(s) that are present.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures.

130. Remove any involved persons from the area when illicit contraband is found, a conveyance is seized or a person is placed under arrest.

131. Notify the shift superintendent of the removal of persons from the normal stream of traffic.

132. Superintendents will take appropriate steps to provide any assistance that may be required.

133. Should the examination result in a seizure or enforcement action that falls within the threshold for referral for prosecution, the officer or Superintendent will ensure that Investigations is advised and that all pertinent details are included in the referral.

Note: Refer to Part 9, Chapter 1, CBSA Prosecution Policy.

134. Record the details of intensive, resultant or unusual examinations in your notebook.

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135. Complete in full an ICES Examination Report and if necessary, an ORS report and, where applicable, forward it to the responsible Regional Intelligence Officer and/or Targeter for all intensive examinations and examinations conducted as the result of a lookout or target.

Note: For non-automated ports, the examination report must be completed manually.

Land Border

136. Advise the driver of the vehicle to turn off the ignition and remove the keys.
137. Request all occupants exit the vehicle and to remove all loose money, wallets and purses from the vehicle. Direct all occupants to stand at a reasonable distance where they can still be observed and can observe the examination until the examination is complete.
138. Ensure the examination area is safe including the positioning of the conveyance and that it cannot be moved during examination.
139. Officer safety is of the utmost importance when conducting a detailed examination, and as such, officers should limit the depth of their examination to which they are trained to carry out.
140. Officers must be aware of safety considerations for the conveyance owner and of potential liabilities should they attempt to dismantle and subsequently attempt to re-install certain parts of the vehicle that their training pertaining to examination policies does not support.
141. The CBSA may be liable for damage caused to vehicles during examinations. If damage occurs, superintendents will follow the steps laid out in the Comptrollership Manual - Finance Volume Chapter 19: Claims and Ex-Gratia Payments.
142. Ask the driver to remove any suitcases, packages or containers from the vehicle, including the trunk, place them on the secondary counter, and open them.
143. Where a random referral examination is undertaken, conduct a systematic and methodical search of the conveyance including:

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Note: Refer to Appendix A - Passenger Vehicle Examination Requirements.
For examinations of marine pleasure crafts, refer to Part 4, Chapter 9, Marine
Pleasure Craft Examinations.

144. Where additional indicators are observed, officers may consider examining additional areas of the conveyance including (but not limited to) the following:

Note: The use of detection technology equipment such as inspection mirrors and flashlights, fibrescopes, probes, and/or X-ray equipment may assist in the examination of visually limited areas of vehicles and luggage.

Note: For reference, refer to Appendix A- Passenger Vehicle Examination Requirements

145. For health and safety reasons, officers will not dismantle the following items:

146. When there are reasonable grounds to suspect that goods are concealed within a conveyance, the superintendent may approve that a qualified person (i.e. licensed mechanic) dismantle the conveyance. An officer must always be present when dismantling and subsequent re-installation is being conducted by a licenced mechanic.
147. Officers must record indicators that led to the dismantling of the vehicle, as well as details pertaining to the further examination assisted by the

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mechanic in their notebooks. Photos should be taken throughout the examination for evidence purposes.

148. Any fees incurred due to the licensed mechanic and/or towing company are the responsibility of the CBSA.

Note: Detention of a traveller may also be necessary. Refer to Part 6, Chapter 1, Arrest and Detention, for information on detention procedures.

149. Obtain ignition keys from the driver as soon as you suspect that a conveyance will be seized.
150. When employing the services of a detector dog team, ensure only the dog and handler are in and around the conveyance unless the handler requests the assistance of another officer.
151. If a detector dog team is used in the examination of a motorhome and an occupant insists on being present, they may be permitted as long as it is safe to do so and they do not interfere with the search and stay out of the way of the dog and handler.

Recreational Vehicles

152. To prevent allegations of theft or misconduct while examining recreational vehicles such as trailers and motorhomes, officers may allow one of the occupants to observe the interior examination and, when necessary and deemed safe to do so, assist in opening compartments.
153. When examining a recreational vehicle with none of the occupants present, it is highly recommended that two officers conduct the examination. Where this is not possible, the examining officer will document in their notebook the circumstances surrounding the examination.
154. If there is concern for the safety of the officer examining a recreational vehicle, an assisting officer should be present. If the assistance of another officer cannot be secured, the examining officer may request that all persons wait outside the vehicle.

Pocket, Purse, and Wallet Examinations

155. Secure baggage and conveyance (where applicable).
156. Separate travelling companions and request another officer watch them closely to ensure that they do not destroy or discard evidence and do not communicate with one another.

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157. Escort the person to a private area.

158. Whenever possible, request the assistance of another officer.

Note: It is recommended that officers of the same sex as the traveller conduct pocket, purse and wallet examinations.

159. Ask the person to empty the contents of their pockets, purse, and/or wallet onto a counter or table.

160. Ask the person to count their currency out loud and note the information in your notebook. Be cognisant of other people in the immediate vicinity who may be able to hear such discussions.

161. Ask the person to turn out their coat, jacket and trouser pockets.

162. Examine pockets, purse, wallet and the contents.

163. Officers may confirm that pockets that cannot be turned out (i.e. cargo, hidden or security pockets) are empty by patting the pocket area.

164. If required, ask the person to lift their feet and display the bottom of their shoes.

165. Record the details of the pocket, purse and wallet examination in your notebook.

Outer Clothing Examination

166. Take the person to as private a location as possible within secondary.

167. Ask the person to remove the outer layer of clothing (i.e. hat, jacket, coat, shoes or boots) that is to be examined.

168. In the case of jackets and coats, ensure that the person is appropriately clothed underneath the item in question prior to requesting its removal.

169. Enter the details of the outer clothing examination in your notebook.

REFERENCES

170. Customs Act
The Canadian Charter of Rights and Freedoms
Comptrollership Manual
Detector Dog Service Manual

ENFORCEMENT MANUAL

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 4

COMMERCIAL SHIPMENT EXAMINATION POLICY AND PROCEDURES

08/03/13

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POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to conduct examinations of commercial shipments in accordance with the provisions set out in the *Customs Act* and in recognition of the requirement for safety.

DEFINITIONS

2. Refer to Part 11 – Glossary.

AUTHORITIES

Customs Act

3. Section 11.2 - Allows the designation of areas as customs controlled areas.
4. Section 11.3 - Owners or operators of customs controlled areas may grant access to authorized or prescribed persons only.
5. Section 13 – Importers, exporters, transporters, and their representatives are obligated to answer truthfully questions asked with respect to commercial shipments. They must also present the goods, remove any covering, unload any conveyance, and open or unpack any package or container that a CBSA officer wishes to examine.
6. Section 21 – Transporters will provide free access to CBSA officers to their warehouse, storage sites, etc. for the examination of goods that have been imported but not released.
7. Section 27 - Operators of sufferance warehouses, bonded warehouses, and duty free shops will provide access to CBSA officers to their premises for the examination of imported goods.
8. Section 99(1) (a) – Authorizes CBSA officers to examine goods and any container or conveyance that may contain goods upon importation up to the time of release.
9. Section 99(1) (c) – Authorizes CBSA officers to examine any goods that have been reported under Section 95 at any time up to the time of

exportation.

Note: These provisions include the authority to examine in transit commercial shipments that have arrived in Canada and the baggage of their passengers regardless of the reason of arrival.

10. Section 99(1) (d) – Authorizes CBSA officers to examine goods and take samples in reasonable amounts, if officers suspect an error has been made in reporting, a refund or drawback is requested, or if they suspect on reasonable grounds that a contravention in respect of any goods has or might be occurring.
11. Section 99(1) (f) – Authorizes the examination of any goods and conveyance a customs officer suspects on reasonable grounds contains goods that are in contravention of the Act.
12. Sections 111 and 112 – Provides for acquiring and executing a search warrant in order to conduct a customs examination away from a customs area or in places not subject to customs control.
13. Section 153.1 - Authorizes the CBSA officer to arrest an individual that is physically or otherwise interfering with the CBSA officer's work or molesting the CBSA officer in the performance of his/her duties, or attempting to do so.

PURPOSE AND SCOPE

14. The purpose of this policy is to provide guidelines to CBSA officers on conducting examinations of commercial shipments of goods.
15. It is also the purpose of this policy to emphasize the importance of health and safety when conducting examinations of commercial shipments.
16. This policy applies to all CBSA personnel.

BACKGROUND

17. One of the key activities of front line CBSA officers is to conduct examination of goods. Under the authority of the *Customs Act*, examinations allow CBSA officers to either confirm that goods have been properly reported and accounted for or to intercept goods and persons who are not complying with Canadian laws.

18. Due to limited resources and trade considerations, it is neither possible nor desirable to examine every shipment that is imported or is about to be exported. Therefore, CBSA is committed to maximize its resources by selectively targeting high-risk shipments that are considered to be greatest potential risk to the Canadian economy and/or society, while facilitating low-risk shipments whenever possible.
19. To support examinations of suspected high-risk shipments, CBSA continues to invest in state-of-the-art contraband detection technology to enhance our ability to cease contraband goods from entering Canada and to further enhance our ability to protect Canadians.

POLICY GUIDELINES

General

20. Commercial shipments will be examined for customs purposes when deemed necessary at their point of entry or at departure or inland where CBSA services are available.
21. Examinations of commercial shipments will be conducted when necessary to:
 - a. verify description, quantity, country of origin, value, markings, etc.
 - b. verify or determine that a particular shipment, transporter, importer, or exporter complies with the laws and regulations administered by CBSA and other government departments (OGD's);
 - c. ensure that documentation presented to report or account for goods accurately describes those goods;
 - d. provide additional information or to take samples of goods in order to assist compliance verification in verifying the tariff, value, etc., of the goods after they have been released;
 - e. follow-through on examinations of identified shipments such as those selected by commercial or enforcement systems or deemed as possibly suspect by an alert or lookout; and
 - f. confirm or negate officers' suspicions based on indicators of non-compliance.

22. CBSA officers will ensure that the point of finality has been reached prior to undertaking the examination of any commercial goods.

Note: Refer to Part Three, Chapter Three, Reporting, Questioning, and Referral Policy and Procedures for guidelines on reaching the point of finality.

23. CBSA officers will review all documentation relating to commercial shipments before undertaking an examination. The seal should be examined for any discrepancies from the number listed on the shipping documents and any seal anomalies noted, such as a broken seal, differing seal numbers from that listed on the manifest.

24. All examinations will be conducted in a thorough, methodical, and proficient manner.

25. Ensure all Food, Plant and Animal program requirements are met while conducting commercial examinations, this includes the inspection of wood packaging materials, ensuring the goods are free of soil and related matter and, where required, ensuring goods are disposed of in accordance with international waste policies and procedures.

Note: For wood packaging examination, refer to the Standard Operating Procedures – Entry Requirements for Wood Packaging at:

26. Regardless of the type of referral, examining officers must ensure each examination is well-focused without ignoring the possibility that a contravention may exist, that may be unrelated to the reasons behind the referral.

27. Throughout examinations, CBSA officers will be alert to the presence of indicators that could suggest discrepancies such as contraband, undeclared, or falsely reported goods.

28. CBSA officers will use contraband detection equipment and tools to assist them in the examination of high-risk shipments.

Note: Refer to Part Four, Chapter One, for Contraband Detection Equipment Policy and Procedures.

Note: The use of contraband detection equipment such as inspection mirrors and flashlights, fiberscopes, probes, x-ray, large scale imaging systems, and detector dog teams may assist in the examination of visually

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limited areas.

29. CBSA officers will progressively intensify the level of examination when indicators raise suspicions that a shipment contains contraband, undeclared, or falsely reported goods or when contraband, undeclared or falsely reported goods, or evidence is discovered.
30. CBSA Officers will ensure that when sampling is required, samples will be collected from different parts of the load (i.e., front, middle, back and bottom) when it is impractical to examine all goods in a shipment.
31. CBSA officers are responsible for responding to questions concerning the examination process.
- 32.

Note: Refer to Part Two, Enforcement Priorities for CBSA policies and procedures regarding discovery of contraband.

33. When undeclared goods are discovered or a contravention identified, CBSA officers will not conclude the examination until they are satisfied that all undeclared goods and evidence have been found.
34. CBSA officers will immediately arrest, advise and caution any suspects present when they discover illicit contraband.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

35. Where an examination reveals unreported or falsely reported goods for commercial purposes that meet the thresholds for referral, the superintendent will ensure that investigations is advised.

Note: Refer to Part Nine, Chapter One, Investigations Referrals Policy and Procedures.

36. Examinations will terminate when there are no longer grounds to suspect that further examination could lead to the detection of a contravention.
37. All commercial examinations results and comments will be recorded in the applicable systems in accordance with the Examination Results Recording Policy.

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Note: Refer to Part Four, Chapter fourteen, for Commercial Goods Examination Results Recording Policy.

38. CBSA officers will familiarize themselves with indicators, high-risk commodities and related information by reading intelligence bulletins, alerts, and other relative publications available at the port.
39. Transporters, importers, exporters, and/or their representative, when present, may be allowed to view their commercial shipment examinations,

Note: Examinations will not be delayed in order to await the arrival of any of the above interested parties.

40. Transporters, importers, exporters, and/or their representatives viewing an examination must be kept at a reasonable distance to avoid any intentional or non-intentional interference.
41. CBSA officers will not be deterred from undertaking an examination based on transporter, importer, exporter and/or their representatives' objections.
- 42.
43. CBSA officers will record in their notebook incidents of dealings with upset or hostile persons, such as the time, the person's actions, statements, non-verbal indicators and physical conditions, as well as any witnesses to an incident.
44. If a person hinders a CBSA officer during an examination, the CBSA officers should attempt to defuse the situation, including an intervention of a superintendent.
45. In the event a CBSA officer must arrest the transporters, importer, exporter, and/or their representative for refusing to comply with an examination or obstructing an examination, the CBSA officer must remove the person under arrest from the area.
46. CBSA officers will obtain the conveyance ignition keys from the transporter when indicators and/or evidence suggest a conveyance will be seized.

Note: Refer to Part 4, Chapter Ten, for Commercial Motor Vehicle

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Examination Policy and Procedures.

47. In cases of bonded carriers, if an examination is warranted but facilities or personnel are unavailable, the load must be sealed with a high security seal, applicable documentation prepared, and the inland office alerted for the need to examine the shipment.

48. Seals will not be used to secure high-risk shipments to go in bond for examination. They will be examined at the first point of arrival or escorted to an approved place of examination.

Note: See Escorting of High-Risk Shipments below.

49. CBSA officers will complete a report for all unusual examinations and forward it in a timely manner to the Regional Intelligence Officer (RIO).

50. Any problems encountered in following this policy are to be reported immediately to the responsible superintendent.

Health and Safety

51. One CBSA officer is required to conduct the examination of the shipment at the CBSA office, provided there is at least one additional CBSA personnel in reasonable proximity. If the examination is to take place off-site, then depending on the risk assessment, location, type of examination and personal interactions (with crew, passengers, clients, etc.), one or more CBSA officers can attend.

Note: Refer to *Doubling-up Policy for CBSA Ports of Entry* at:

Note: Refer to *Policy on Uniformed CBSA Officer and/or Superintendents Working at Off-site Locations* at:

52. CBSA officers may tactically reposition _____ from any situation during an examination where they believe it poses a significant and unavoidable risk to the public and/or themselves.

53. Throughout all examinations, CBSA officers will take measures to protect the health and safety of themselves and the public.

54. CBSA officers will take the additional necessary preventative measures, such as wearing gloves, goggles, dust masks, dosimeters, or whatever

equipment that is deemed appropriate.

55. CBSA officers will familiarize themselves with the dangers associated with commercial commodities and the measures and deterrents needed to avoid risks posed to health and safety.

Note: Refer to the Material Safety Data Sheets accessible through the Canadian Centre for Occupational Health and Safety website at <http://www.ccohs.ca/>, and/or the CANUTEC website at <http://www.tc.gc.ca/canutec/> for information regarding dealing with dangerous goods.

56. CBSA officers will be familiar with and follow the guidelines outlined in the Transport Canada handbook titled Dangerous Goods – Initial Emergency Response Guide. This guide may be found online at the following link, <http://www.tc.gc.ca/eng/canutec/guide-menu-227.htm>, and must be maintained at every CBSA office, including the meanings of the various placards and labels that Transport Canada requires be clearly displayed on shipments and conveyances carrying dangerous goods.

57. CBSA officers must be trained in the Work Place Hazardous Material Information System (WHMIS) prior to handling any hazardous materials.

58. CBSA officers will familiarize themselves with the Export and Import of Hazardous Waste Regulations of the *Canadian Environmental Protection Act* and the specific shipping documentation requirements for dangerous goods shipments.

59. CBSA officers must review documentation thoroughly to determine the types of goods declared and check conveyances and containers for dangerous goods labels and placards before opening a shipment, conveyance, or container.

60. CBSA officers will ensure containers and conveyances cannot be moved during examinations and insist that land conveyances be turned off and the keys removed before and throughout examinations of shipments on-board.

Note: Refer to Part Four, Chapter Five, Container Examination; Chapter Six, Commercial Aircraft Examination; Chapter Eight, Commercial Marine Vessel Examination; and Chapter Ten, Commercial Motor Vehicle Examination Policies and Procedures.

61. Commercial shipments to be examined at land borders must be offloaded and reloaded at a Designated Commercial Offices (DCOs)

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Note: Refer to Appendix A for detailed policy pertaining to offloading of commercial shipments at DCOs.

62. Carriers may, with the approval of the examining officer, perform the offload themselves or engage another service provider of their choice to do this; however, this must be done where health, safety and security requirements of the port can be maintained
- 63.
64. CBSA officers will advise their superintendent immediately when they have reasonable cause to believe that examining a commercial shipment poses a significant risk to their health or the health of the public.
65. Superintendents will suspend the examination, investigate the situation, and when necessary notify and request the assistances of the appropriate authorities (i.e. Environment Canada).
66. Examinations will not be reinitiated until it is determined that, with the necessary preventative measures and precautions, little to no danger exists or the risk to health and safety has been removed.

Note: Refer to Part Two, Chapter Four, Hazardous Waste Policy and Procedures and Chapter Seven, Precursor Chemicals Policy and Procedures.

Escorting of High-Risk Shipments

67. When examination facilities are not located at the first point of arrival in Canada, high-risk shipments and conveyances will be escorted to an offsite examination facility that is the closest and/or that has the space, tools, and equipment required to conduct a thorough examination.
68. All high-risk shipments will be escorted, when they are required to be examined at a CBSA examination facility that is not located at the CBSA office where the primary report is made.
69. All examinations of the cab of a tractor-trailer will be carried out prior to the vehicle leaving the border area.

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Note: Refer to Part 4, Chapter Ten, for Commercial Motor Vehicle Examination Policy and Procedures.

- 70. Escorts of conveyances and shipments will be carried out using CBSA vehicles.
- 71. CBSA officers will obey all traffic laws while driving escort.
- 72. The law enforcement agency of jurisdiction will be contacted for assistance if a conveyance attempts to take flight while en route.
- 73. Under no circumstances will CBSA officers engage in a pursuit of a vehicle that is attempting to flee.

Mandatory Referral Examinations

- 74. Examinations undertaken on the basis of mandatory referrals will generally be limited to a standard examination of a part of the shipment until the CBSA officer is satisfied that the conditions required for release of the goods have been met.
- 75. When the requirements are not met, CBSA officers will continue to examine the goods until they are satisfied that all irregularities have been identified.
- 76. Shipments or portions of shipments not meeting all of the mandatory requirements will not be released until all conditions have been met.

Random Referral Examinations

- 77. CBSA officers will conduct examinations of randomly referred shipments according to the level of intensity dictated by indicators discovered during the examination.
- 78. Where a high security seal was removed from the load in order to examine the contents, a CBSA high security seal should be re-attached and the new seal number annotated in the cargo documentation of the carrier.

Selective Referral Examinations

79. As the result of a selective referral, CBSA officers will determine the intensity of examinations based on the indicators that prompted the selection and that are uncovered during the examination.
80. CBSA officers will complete a report for all unusual selective examinations and forward it in a timely manner to the responsible Intelligence officer.

Intensive Examinations

81. Based on the nature of the information in a lookout, CBSA officers will conduct a more comprehensive examination accordingly.

Note: The use of contraband detection equipment such as inspections mirrors and flashlights, fiberscopes, probes, x-ray, Large Scale Imaging systems and detector dog teams may assist in the examination of visually limited areas.

Note: Refer to Part Four, Chapter One, for Contraband Detection Equipment Policy and Procedures.
82. Examinations will progress in intensity based on the building of indicators and supporting evidence discovered.
83. If a CBSA officer suspects that a shipment contains prohibited items, such as weapons or narcotics, an examination must be conducted at the earlier time possible.
84. Before cutting, drilling, and/or dismantling is undertaken during an examination, CBSA officers must have reasonable grounds to do so and must be able to clearly articulate them.
85. Whenever possible, before proceeding with an examination that may involve disassembling, dismantling or damaging goods or conveyances, the examining officer will consult with the superintendent. Where this is not possible or not practical, the superintendent is to be notified of the examination and results as soon as possible.
86. CBSA officers must keep detailed notebook entries of intensive examinations as they may be required to state the grounds more precisely than for lower intensity examinations.

87. CBSA officers will complete an Intelligence Report in the Occurrence Reporting System for all unusual examinations and, where applicable, forward the report in a timely manner to the responsible Intelligence officer.

Examination Damages

88. CBSA officers will take photographs before and after examinations when:

- a. It is likely there will be a complaint as a result of conducting an examination;
- b. there is pre-existing damage;
- c. they suspect that damage may be caused during an examination;
- d. the damage was caused by the offload service provider;
- e. they are going to dismantle or remove permanent fixtures or parts; and
- f. they are going to drill, cut or break an item to determine if it is concealing goods.

Note: Photographs taken prior to examination will record any existing damage and assist officers in re-stuffing the load as they found it. Pictures taken during an examination will document the equipment and techniques used. Photographs taken after examination will document the extent of the damage caused.

89. CBSA officers will photograph any unexpected accidental damage resulting from an examination.

90. In cases of pre-existing damage or when damage is caused by an examination, CBSA officers will record all of the relevant information in their notebooks.

91. When an examination causes damage, CBSA officers will prepare a report for management indicating the nature of the damage (e.g. scraped, broken, crushed, etc.), its extent, its suspected or actual cause, and include all supporting photographs.

Examination Related Costs

92. Persons, companies, or their representatives reporting goods are liable for costs incurred to make shipments available for examination, (i.e., transportation to examination site, unloading the conveyance, opening packages, storage, etc.).
93. CBSA may pay for affected goods to be brought back to their original state or will make monetary amends when an examination is non-resultant and damage has occurred.
94. CBSA will not normally pay for damages to goods when they have been found to be in contravention of and seized under the *Customs Act*. Goods seized by CBSA belong to the Crown from the moment of seizure.

Note: The regulations and policy for handling damage claims against the Crown are contained in Chapter Nine, Section Three, Financial Administration Volume, Finance and Administration Manual.

ROLES AND RESPONSIBILITIES

Regional Operations

Border Services Officers

95. Border Services Officers are responsible for:
- a. adhering to this policy and procedures;
 - b. successfully completing the Transportation of Dangerous Goods training, where applicable;
 - c. successfully completing the Hazardous Waste training, where applicable;
 - d. being vigilant in protection their health and safety and that of the public;
 - e. maintaining in safe and good working order their personal tools, personal protection equipment and all contraband detection equipment used in examinations;
 - f. maintaining all equipment logs as per manufacturer's instructions and the *Canada Labour Code*;
 - g. completing reports and inputting results and accurate examination comments of commercial examinations into all applicable CBSA systems;
 - h. reporting any problems encountered while performing their duties to the superintendent and/or manager; and

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- i. reporting any defective equipment to their superintendent and/or manager immediately.

Regional Management

96. Regional management and superintendents are responsible for:

- a. promoting, monitoring, and ensuring that the policy and procedures relative to the examination of commercial shipments are adhered to at their port;
- b. ensuring CBSA officers receive the required training and equipment;
- c. guiding and supporting CBSA officers in the performance of their duties;
- d. correcting any break of procedures or health and safety requirements;
- e. taking appropriate corrective action on policy and procedure breaches;
- f. ensuring examination results are clear and complete;
- g. liaising with importers, exporters, brokers, transporters, and their representatives; and
- h. reviewing and filing all examination reports.

Operations Branch

Port of Entry Operations – Commercial Operations

97. Commercial Operations will be responsible for:

- a. ensuring the Policy, Standard Operating Procedures and Enforcement Manual chapters relevant to examination of commercial shipments are carried out in the fields.

Programs Branch

Commercial Border Programs – Commercial Secondary Unit

98. The Commercial Secondary Unit is responsible for:

- a. providing program guidance, through structured national guidelines, national policies and national procedures;
- b. developing, implementing, maintaining and monitoring of policies and protocols for secondary commercial processing in all modes;
- c. providing policy direction for course content;
- d. identifying training requirements;
- e. providing advice and clarification on policy issues;

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- f. monitoring adherence to this policy and procedures by the regions; and
- g. providing guidance and support to regional management and superintendents.

PROCEDURES

Preparing for Examination

- 99. Take any necessary health and safety precautions (i.e. wearing of gloves, goggles, masks, etc.).
- 100. Request the driver of land vehicles turn off the ignition and remove the keys.
- 101. Ensure the examination area is safe including the positioning of containers and conveyances, and that they cannot be moved during examination.
- 102. Ensure that the container is placed securely on the ground or other secure supporting surface such as a truck chassis that is no more than two metres in height.

Note: Refer to Part Four, Chapter Five, Marine Container Examination Policy and Procedures.

- 103. Keep conveyance occupants, importers, exporters and their representatives at a reasonable distance but where they can still view the examination.
- 104. Review all documentation relating to the commercial shipment in order to be familiar with the commodity, such as:
 - a. cargo manifest;
 - b. quantity;
 - c. value;
 - d. bill of lading;
 - e. invoices; and
 - f. freight bills.
- 105. Prior to opening the container doors, visually inspect all seals and record their location, type condition and numbers in your notebook and on the examination report.

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106. Determine if seals have been tampered with, altered or replaced and verify them against the available documentation. When CBSA officers become aware that a high security seal was not applied, or show signs of tampering, they should advise their Regional Intelligence Officer.

Conducting the Examination

107. Use a systematic and thorough approach of all examination of commercial shipment.
108. Base the level of intensity of the examination on the information provided in the lookout/target and/or on the presence of multiple indicators.
109. Ensure that packages that are opened for examination are resealed if non-resultant.
110. Record any peculiarities and discrepancies during the course of the examination in your notebook.
111. Take samples of commodities when necessary.
112. Consider the use of examining tools whenever possible to facilitate the examination and to avoid causing damage to the shipment.
113. Utilize contraband detection equipment and detector dog services whenever possible and when appropriate.

Note: Refer to Part Four, Chapter One, Contraband Detection Equipment Policy and Procedures.

- 114.
115. Intensify examinations as indicators lead to grounds to suspect that a contravention exists.
116. When possible, consult with the superintendent before proceeding to an examination that involves disassembling, dismantling, or perhaps damaging goods. Where this is not possible or no practical, notify the superintendent of the examination and results as soon as possible.

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117. Photograph the shipment, before, during, and after any examination that involves disassembling, dismantling, or damaging goods.
118. Any problems encountered in following this examination policy are to be reported immediately to the responsible superintendent.
119. Record complete examination reports, whether resultant or non-resultant, in the applicable CBSA system/s in accordance with the policy framework for Examination Results Recording.

Note: Refer to Part Four, Chapter Fourteen, Commercial Goods Examination Results Recording, for further details.

120. Ensure that the referral is recorded and directly addressed when entering examination results within the CBSA system/s.
121. Complete a report for all unusual examinations and forward it in a timely manner to the responsible Intelligence Officer.
122. The superintendent will be informed of examinations and given a file with all pertinent documentation for filing, and disseminating if required.

Escorting High-Risk Shipments

123. Arrange for the use of a CBSA vehicle.
124. Contact the examination facility you will be escorting the conveyance and shipment to the facility and advise them of your intentions.

Note: This will allow space to be made available if necessary and tools and equipment to be prepared.
125. Review the route that will be taken with the driver.
126. Explain to the driver that you must be in constant visual contact with the conveyance at all times during the trip, therefore, they must wait if you are held up at a traffic light or for any other reason that may result in disruption of visual contact.
127. Check the CBSA vehicle you will be driving has a full tank of gas and is in good working order.

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128. Drive behind the conveyance and maintain visual contact with it at all times during the trip.
129. Obey all traffic signs, signals and laws.

REFERENCES

Customs Act

Canadian Environmental Protection Act – Export and Import of Hazardous Waste Regulations

Finance and Administration Manual

Transport Canada's Dangerous Goods – Initial Emergency Response Guide

Canadian Centre for Occupational Health and Safety website at

<http://www.ccohs.ca/>

CANUTEC website at <http://www.tc.gc.ca/canutec/>

CBSA Offload Policy

Canada Labour Code Part II – Occupational Health and Safety

Policy on Uniformed CBSA Officers and/or Superintendents Working at Off-site Locations

Doubling-up Policy for CBSA Ports of Entry

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 4

COMMERCIAL SHIPMENT EXAMINATION

Appendix A

OFFLOAD POLICY

08/03/13

APPENDIX A

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to support responsible border management by ensuring the availability of a national service provider to offload vehicles selected for examination in a timely and efficient manner, while simultaneously supporting the health, safety and security of CBSA employees and users of border facilities.

DEFINITIONS

2. Refer to Glossary.

LEGISLATIVE AUTHORITIES

Customs Act

3. Section 13 – States that every person who reports goods under section 12 inside or outside Canada or is stopped by an officer in accordance with sections 99.1 will;
 - a. Answer truthfully any question asked by an officer with respect to the goods;
 - b. And if an officer so requests, present the goods to the officer, remove any covering from the goods, unload any conveyance or open any part of the conveyance, or open or unpack any package or container that the officer wishes to examine.
4. Subsection 99(1) – Authorizes officers at any time up to the time of release, to examine any goods that have been imported and open or cause to be opened any package or container of imported goods and take samples of imported goods in reasonable amounts.

Canada Labour Code Part II – Occupational Health and Safety Regulations

5. Section 124 – States that every employer will ensure that the health and safety at work of every person employed by the employer is protected.

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BACKGROUND

6. The CBSA is committed to ensuring that the manner in which commercial examinations are conducted at land border ports of entry supports the movement of legitimate trade while recognizing the needs of the importing community and providing Canadians with a secure and efficient border operation. As such, the CBSA national offload policy supports the following four key objectives:
 - a. provide a secure facility in which only persons with pre-approved CBSA security clearance will be granted access;
 - b. ensure that facilities and resources are conducive to the operation of a responsible compliance verification program;
 - c. maintain operational efficiencies while providing clients with the standard of service that is expected of the CBSA; and
 - d. provide a safe and healthy working environment for employees and others lawfully in its premises.
7. This policy supports key CBSA initiatives, namely the Compliance Improvement Plan and its sub-plan the Border Management Plan (BMP).

PURPOSE AND SCOPE

8. The purpose of this policy is to establish guidelines by which commercial examinations at the land border are to be conducted in a manner promoting predictability, consistency, timeliness, and efficiency.
9. This policy will ensure that only those persons with pre-approved CBSA security clearance will be granted access to any facility in which commercial examinations occur.
10. This policy applies to all CBSA employees working at all Designated Commercial Offices (DCOs) at land border ports of entry.

APPENDIX A

POLICY GUIDELINES

11. Under no circumstances will the CBSA bear any responsibility for costs associated with the offload process nor have involvement in the financial transactions between the offload service provider and clients.
 Note: The legal obligation to report and present goods to CBSA for examination as established in the *Customs Act* obliges such persons to assume all financial costs associated with the offload and reload process.
12. Once a shipment has been identified for examination by the CBSA, the carrier will be notified immediately and provided with the name(s) and phone number(s) of the pre-approved service provider(s).
13. After a carrier has been notified that their shipment is to be examined, they will have two (2) hours to complete appropriate business transactions with the service provider and present their goods for examination. Failure to present the goods within this time period will be deemed a contravention to the Customs Act and appropriate penalties will be assessed
14. In instances where an offload and subsequent examination cannot take place at the DCO (e.g., perishable goods, etc.) the policy and procedures outlined earlier in this chapter will apply.
15. At no time will an employee of the CBSA at a DCO operate forklifts or tow motors, open containers, or engage in the offload or reload process.
16. The CBSA will award contracts to pre-approved service provider(s) who will provide offloading services at each of the DCOs.
 Note: To be approved, the service provider must successfully meet or exceed the following conditions as established by the CBSA:
 - a. all laborers have valid enhanced security clearance;
 - b. a minimum of one laborer, per offload, will possess valid licences/certificates to operate offloading equipment and possess proper training designation to operate such equipment;
 - c. the service provider provides all equipment required for conducting offloads and reloading including forklifts;
 - d. the service provider is bonded and carries appropriate liability insurance;
 - e. the service provider is on site during core hours, and at all other times will report within two (2) hours;

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- f. the service provider will perform the entire process of offloading and reloading within the standards set by the CBSA – maximum of six (6) hours for a full offload of bulk goods, and four (4) hours for a full offload of palletized goods; and
- g. the service provider will offer competitive fixed pricing for offload services and will be responsible to collect all fees relating to the offload service directly from the client.

ROLES AND RESPONSIBILITIES

Border Services Officers

17. Border Services Officers are responsible for:

- a. identifying suspect conveyances for examination and promptly informing carriers that their shipment will be examined;
- b. providing carriers with name(s) and number(s) of security-cleared offload service provider(s);
- c. conducting secondary examinations including the operation of x-ray equipment and other appropriate examination tools;
- d. adhering to the policy and procedures related to customs examinations; and
- e. properly recording all information, including reason and type of examination performed, time that the carrier was notified, duration of offloads and examination processes, and actual examination results.

Superintendents

18. Superintendents are responsible for:

- a. ensuring that only security-cleared offload service providers including laborers are granted access to commercial examination facilities;
- b. ensuring that all CBSA officers involved in commercial motor vehicle examinations have received the designated training for conducting commercial vehicle examinations, identifying hazardous materials, and appropriate health and safety precautions;

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- c. identifying the approach and method for examinations and ensuring that all such information pertaining to offload and examination processes are properly recorded;
- d. monitoring time standards and reporting any time delays to program support officers; and
- e. ensuring that the policies and procedures related to customs examinations are adhered to by CBSA officers, transport companies, and offload personnel.

Program Support Officers

19. Program support officers are responsible for:

- a. providing and updating lists of security-cleared offload service providers;
- b. ensuring that those companies selected to perform offload services agree to CBSA established time and cost standards as well as other CBSA criteria related to conducting offloads; and
- c. contacting the Release and Warehouse Program Division should any issue(s) relating to the policy arise.

Customs Operational Policy and Coordination and Field Operations

20. Customs Operational Policy and Coordination and Field Operations, Release and Warehouse Programs is responsible for:

- a. in consultation with the Customs Contraband, Intelligence and Investigations, developing, modifying, and approving all policies and procedures related to commercial examination offloads;
- b. establishing criteria and appropriate evaluation standards to be used for identifying offload service providers;
- c. evaluating and approving potential offload service providers;
- d. engaging the import/export community in determining appropriate and acceptable time and cost standards;
- e. meeting with BMP representatives to ensure program effectiveness; and
- f. monitoring application of the policy.

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ENFORCEMENT MANUAL

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 5

MARINE CONTAINER EXAMINATION POLICY AND PROCEDURES

23/05/13

EN Part 4 Chapter 5
Examination

Marine Container

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POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to conduct examinations of containers in accordance with the provisions set out in the *Customs Act* and in recognition of the requirement for safety.

DEFINITIONS

2. Refer to Part 11 – Glossary.

AUTHORITIES

3. Section 11.2 – Allows the designation of areas as customs controlled areas.
4. Section 11.3 – Owners or operators of customs controlled areas may grant access to authorized or prescribed persons only.
5. Section 13 – Importers, exporters, transporters, and their representatives are obligated to answer truthfully questions asked with respect to commercial shipments and present the goods, remove any covering, unload any conveyance, and open or unpack any package or container that an officer wishes to examine.
6. Section 21 –Transporters will provide free access to warehouses, storage sites, etc. to CBSA officers for the examination of goods that have been imported but not released.
7. Section 27 – Operators of sufferance warehouses, bonded warehouses, and duty free shops will provide access to their premises to CBSA officers for the examination of imported goods.
8. Section 99(1) (a) – Authorizes CBSA officers to examine goods and any containers or conveyance that may contain goods upon importation and up to the time of release.
9. Section 99(1) (c) – Authorizes CBSA officers to examine any goods that have been reported under Section 95 at any time up to the time of exportation.

Note: These provisions include the authority to search in-transit containers and

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cargo regardless of their destination.

10. Section 99(1) (f) – Authorizes the examination of any goods and conveyance a CBSA officer suspects on reasonable grounds contains goods that are in contravention of the Act.

Note: This reference pertains to situations where a conveyance has been released and a CBSA officer wishes to examine it or where a conveyance is being exported and no goods have been reported under Section 95.

PURPOSE AND SCOPE

11. The purpose of this policy is to provide guidelines to CBSA officers when conducting container examinations in CBSA facilities and at marine container terminals. The latter is also known as a dockside (pier) examination.
12. It is also the purpose of this policy to emphasise the importance of health and safety issues when conducting examinations on containers and their cargo.

Note: For contraband examination procedures for containers testing positive for volatile organic chemicals refer to the Fumigant Program User Guide online at:

13. This policy applies to all CBSA personnel.

BACKGROUND

14. In 1998, a Pilot project was implemented to develop a structured and logical method of identifying and examining high risk containers. Primarily, the project involved testing the process for the selection and examination of suspected high-risk containers at the point of entry. Selections were based on targeting methods and examinations were conducted in a methodical and thorough manner.
15. Due to the success of the pilot, a national Marine Container Program was announced and Container Examination Facilities (CEFs) were created. CEFs are now located at the largest marine centers across Canada, namely Halifax, Montreal, Vancouver and Prince Rupert.
16. To support targeting and container examination, the Programs Branch in conjunction with the Marine Centre of Expertise (MCE), develops training specific to these areas.

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POLICY GUIDELINES

Note: Refer to Part Four, Chapter Four, Commercial Shipment Examination Policy and Procedures for guidelines regarding the examination of cargo/commercial goods.

Note: For wood packaging examination, refer to the Standard Operating Procedures – Entry Requirements for Wood Packaging at:

General

17. To conduct a marine container examination, CBSA officers should successfully complete the Container Contraband Examination Course (CCEC) delivered by the Marine Centre of Expertise.

Note: The Marine In-Service training or the Container In-Service training are prerequisites for the CCEC.

18. CBSA officers will use contraband detection equipment (i.e. X-ray) and other tools to assist them in the examination of containers, whenever possible and when deemed appropriate.

Note: Refer to Part Four, Chapter One, for Contraband Detection Equipment Policy and Procedures.

19. CBSA officers will familiarize themselves with indicators, concealment methods, and other related information by reading intelligence bulletins, alerts, and other relevant publications available at the port.

20. Any container or cargo damages noted before, during, or after an examination must be photographed, documented, and immediately reported to the CBSA superintendent on duty.

21. All container examination results and comments will be recorded in applicable system in accordance with the Commercial Goods Examination Results Recording Policy.

Note: Refer to Part Four, Chapter fourteen, for Commercial Goods Examination Results Recording policy.

22. CBSA officers will complete a report for all unusual examinations and forward it in a timely manner to the Intelligence Officer through the Occurrence Reporting System (ORS).

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23. Any problems encountered in following this policy are to be reported immediately to the responsible superintendent.

Health and Safety

24. One CBSA officer is required to examine a container and its cargo at the CEF, provided there is at least one additional CBSA personnel in reasonable proximity.

Note: Refer to *Doubling-up Policy for CBSA Ports of Entry* at:

Note: Refer to Policy on Uniformed CBSA officers and/or Superintendents Working at Off-site Locations at:

25. CBSA officers may tactically reposition _____ from any situation during an examination where they believe it poses a significant and unavoidable risk to the public and/or themselves.
26. When conducting examinations, CBSA officers will take measures to protect the health and safety of the public and/or themselves.
27. CBSA officers must be trained in the Work Place Hazardous Material Information System (WQHMS) prior to handling any hazardous materials, including Dräger-tubes for fumigant testing.
28. CBSA officers unloading, unpacking and/or shipping Hazardous Materials, including Dräger-tubes, must be trained for the Transportation of Dangerous Goods.
29. Prior to examination, testing for volatile organic chemicals (such as fumigants and solvents) is necessary for all marine intermodal containers. Ventilation may also be required.

Note: For fumigant testing procedures refer to the Fumigant Program User Guide online at:

30. Respiratory protection will be worn when and as required, as per the Respiratory Protection Program, and must meet the standards established by that program.

Note: The Respiratory Protection Program can be accessed online at:

31. CBSA officers will wear all personal protective equipment required for the type of examination that is being conducted.

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32. Safety equipment must meet the requirements established by the Canada Labour Code Part II, Canada Occupational Health and Safety Regulations, Part XII, Safety Materials, Equipment, Devices and Clothing and the National Joint Council (NJC) Occupational Health and Safety Directive, Part XIII, Personal Protective Equipment and Clothing. The safety equipment must also be CSA approved where applicable.

33. CBSA officers will only examine containers placed securely on the ground or other secure supporting surface (e.g. truck chassis no more than two metres in height) ensuring portable dolly leg is used when required.

34. During dockside examinations, CBSA officers will place high-visibility pylons (cones or other similar equipment) and warning signs around the working perimeter of containers that are about to undergo an examination.

Note: This will indicate to other workers that an examination is being performed on this area and there are persons working in the area. The CBSA officers are to inform the terminal operators of the significance of the high visibility pylons to ensure they advise their employees accordingly.

35. CBSA officers will conduct dockside (pier) examinations at the opening of the container as they are not permitted to enter the container due to health and safety reasons.

36. CBSA officers will advise their superintendent immediately when they have reasonable cause to believe that examining a commercial shipment poses a significant risk to the public or their health.

37. Superintendents will suspend the examination, investigate the situation, and when necessary notify and request the assistance of the appropriate authorities (i.e. Environment Canada).

38. If involved during the initial phase of a dangerous goods/hazardous materials incident as a first responder, officers should reference the latest edition of the Transport Canada handbook. The handbook is titled Emergency Response Guidebook and is maintained at every CBSA office.

Escorting of High Risk Shipments

39. High-risk shipments may be escorted, when they are required to be examined at a CBSA examination facility that is not the final destination.

Note: Refer to Policy on Uniformed CBSA officers and/or Superintendents

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Working at Off-site Locations at:

40. Escorts of conveyances and shipments will be carried out using CBSA vehicles.
41. CBSA officers will obey all traffic laws while driving escort.
42. The law enforcement agency of jurisdiction will be contacted for assistance if a conveyance attempts to take flight while en route.
43. Under no circumstances will CBSA officers engage in a pursuit of a high-risk vehicle attempting to flee.

ROLES AND RESPONSIBILITIES

Regional Operations - Border Services Officers

44. Border Services officers are responsible for:
 - a. abiding by this policy and procedures;
 - b. completing the Marine In-Service or Container In-Service;
 - c. completing the Container Contraband Examination Course where applicable; (i.e. Interior container examination)
 - d. completing the Work Place Hazardous Material Information System (WHMIS) training;
 - e. successfully completing the Transportation of Dangerous Goods training, where applicable;
 - f. conducting themselves and performing their duties in accordance with the Code of Conduct;
 - g. being vigilant in protecting their health and safety and that of the public;
 - h. maintaining in safe and good working order their person tools, personal protection equipment and all contraband detection equipment used in examinations;
 - i. maintaining all equipment logs as per manufacturer's instructions and the *Canada Labour Code*;
 - j. reporting any defective equipment to their supervisor immediately; and
 - k. completing reports and inputting results and examination comments of container examinations into all applicable CBSA systems.

Regional Operations - Regional Management

45. Regional Management will be responsible for:
 - a. promoting, monitoring, and ensuring adherence to the policy and procedures;
 - b. ensuring officers receive the required training and equipment;

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- c. guiding and supporting CBSA officers in the performance of their duties;
- d. correcting any breach of procedures or health and safety requirements;
- e. ensuring exam results are clear and complete; and
- f. reviewing and filing all examination reports.

Operations Branch - Port of Entry Operations – Commercial Operations

46. Commercial Operations will be responsible for:

- a. ensuring the Policy, Standard Operating Procedures and Enforcement Manual chapters relevant to container examination are carried out in the field.

Programs Branch - Commercial Border Programs – Commercial Secondary Unit

47. The Commercial Secondary Unit will be responsible for:

- a. providing program guidance, through structured national guidelines, national policies and national procedures;
- b. developing, implementing, maintaining and monitoring of policies and protocols for secondary commercial processing in all modes;
- c. providing policy direction for course content;
- d. identifying training requirements;
- e. providing advice and clarification on policy issues;
- f. monitoring adherence to this policy and procedures by the regions; and
- g. providing guidance and support to the MCE.

Emerging Border Programs – Detection Programs Unit

48. The Detection Programs Unit will be responsible for:

- a. developing, implementing, maintaining and monitoring of national policies, processes, regulations and legislation related to detection tools and technology;
- b. providing functional direction to the field. Conducting research for tools and equipment that meet the CBSA's marine operational needs;
- c. providing detailed information to the Program Authority and the MCE on detection technology tools that meet Occupational Health and Safety requirements and pertain to the marine mode;
- d. providing guidance to the field pertaining to the tools and instruments used in contraband detection;
- e. working in cooperation with the MCE to evaluate new technologies to establish their operational feasibility;
- f. monitoring detection technology performance, effectiveness and use at a national scale; and
- g. designing policies on detection technology.

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Human Resources Branch - Marine Centre of Expertise

49. Marine Centre of Expertise (MCE) is responsible for:

- a. developing, designing, and delivering training pertaining to container examination;
- b. providing advice on training material to field operation upon request;
- c. researching and developing new practices and procedures for efficient container examinations on behalf of Headquarters;
- d. conducting testing of contraband detection equipment related to container examination where required or requested by the Enforcement Branch;
- e. assisting the program areas in the development of methods, procedures, policies, and tools in support of the container examination program;
- f. providing assistance to CBSA officers when requested; and
- g. exchanging examination techniques, information, training aids, and materials with other Marine Training Facilities to maintain a high level of expertise.

PROCEDURES

Note: Refer to Part Four, Chapter Four, Commercial Shipment Examination Policy and Procedures for guidelines regarding the examination of cargo/commercial goods.

Note: For wood packaging examination, refer to the Standard Operating Procedures – Entry Requirements for Wood Packaging at:

General - Container Examination Facility - Container Types - Refrigerated Containers

50. Ensure that you do not enter an oxygen deficient environment. Refrigerated containers (reefers) may be used as controlled atmosphere containers. Refer to controlled atmosphere section.

Note: There should be a placard on the exterior of the container indicating a controlled atmosphere

51. Be aware of the risk of slipping and temperature changes during the examination of the interior of refrigerated containers.

52. Refrigerated containers are designed to maintain temperatures between -25°C and +25°C and as such special considerations must be given to minimize cargo damage and maintain the safety of the examining CBSA officers.

Note: For public health and safety, it is important to maintain temperature levels

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within the prescribed range to ensure minimal damage to the cargo. This helps to maintain food safety levels.

53. Ensure the refrigeration unit is turned-off before inspecting the shipment.
54. Carefully plan the examination so that it can be done efficiently and quickly to prevent any damage to the cargo. Take note of the 'set temperature' and confirm that it matches with the 'recording temperature', this can facilitate with the planning of the examination.

Note: To maintain the longevity of the set temperatures do not open the container doors until necessary. Leaving doors open for too long before the examination commences may result in cargo damage.

55. Where possible, a second refrigerated container should be used to contain the examined cargo in order to reduce temperature changes and spoilage of the cargo during an examination.

General - Container Examination Facility - Container Types - Controlled Atmosphere Containers

56. Some refrigerated containers have a "controlled atmosphere" capability that may represent additional safety risks for anyone entering such container

Note: A controlled atmosphere container (CA) refers to a container where the atmosphere is a mixture of nitrogen and oxygen. By controlling the atmosphere, the ripening process of certain foods is extended. Oxygen levels inside the containers may not be sufficient to support life.

57. If a controlled atmosphere system is present and operating, specific steps must be taken prior to entry:
 - a. the refrigeration unit and/or the CA unit must be turned off. Open the container following the proper opening procedures; and
 - b. ventilate the container for a minimum of forty-five minutes before beginning the examination. The container must be ventilated away from any people or the warehouse.

General - Container Examination Facility - Container Types - Bulk Containers

58. Officers should exercise caution when conducting bulk container examinations, as the cargo can shift easily and without warning. The left door should never be opened due to the danger of commodity engulfment.
59. Do not insert any body parts through roof hatch covers on bulk containers.

Note: Bulk containers are designed to transport bulk dry merchandise such as

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malt and grains and may be difficult to examine through regular access doors when the container is full.

General - Container Examination Facility - Container Types - Tank Containers

60. Tank containers meet the definition of a confined space and shall not be entered by CBSA personnel unless trained in confined space entry.

Note: Tank containers, which may be under pressure, are designed to transport liquid and gas cargo such as foodstuffs and chemicals (i.e., alcohol, juice, vegetable oils, flammable gases, oxidizing agents, toxic substances, corrosives, etc.).

61. Be aware that the tank may have an oxygen deficient atmosphere and can be Immediately Dangerous to Life and Health (IDLH), and may emit dangerous, explosive, and/or toxic vapours.
62. Serious considerations must be given to the exact nature of the cargo, the reasons for referrals and the familiarity of the examining officers with the physical features of the container prior to considering cargo examination.

Note: Tank containers can have features such as refrigeration units, electrical/steam heating, or insulation that require special safety measures and handling procedures. Pay special attention to the document holder on tank containers.

63. Depending on the cargo, special handling equipment may be required to carry out the examination. As well, emergency plans must be formulated in advance of the examination. Consultation with industry experts may be required.
64. To determine the level of liquid in the container use a dip-stick.

Note: If there is a presence of a hazardous substance in the container, do not verify the level of the liquid.

General - Preparing for Examination

65. Read documentation for any special instructions regarding the cargo and take all the necessary precautions to protect your health and safety and that of the public.
66. Always wear the appropriate CBSA provided personal protective equipment during examinations. For example wear:

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- a. safety glasses, and leather gloves when operating power tools such as drills and saws;
- b. safety glasses and protective gloves when performing “NIK” tests;
- c. respiratory protection and safety goggles when examining cargo that could result in airborne particles being inhaled or created;
- d. head protection where there is a risk of head injury (e.g. examination of the underside of the container); and
- e. leather, latex, or Nitrile gloves depending on the nature of the cargo being inspected.

Note: Respirators are selected and issued to provide protection against identified and assessed potential respiratory hazards and are only to be used by fit tested and trained personnel pursuant to the Respiratory Protection Program. CBSA officers must be fit tested at a minimum of every two years. Also, after a significant weight loss or gain or if there is a change in the model of respirators.

67. When examining a container dockside, place high-visibility pylons (cones or other similar equipment) and warning signs around the working perimeter of containers that are about to undergo an examinations.

68.

69. Determine if seals have been tampered with, altered, or replaced and verify them against the available documentation. Partners in Protection members have committed to seal their containers using a high security seal. Where officers become aware that a high security seal was not applied, or show signs of tampering, they should advise their Regional Intelligence Officers (RIOs) as per standard Occurrence Reporting Systems (ORS) procedures.

70. Inspect container doors and door hardware to determine if the container has been modified to be opened without breaking the seal. Before opening the doors, record in your notebook the doors' condition and take pictures if required.

71. Install door strap on the locking bars to mitigate the risk of injury due to cargo which may have shifted onto the doors during transport.

Note: For procedures of opening doors for dockside (Pier) examinations refer to the Fumigant Program User Guide online at:

72. When a container is ready for examination, read the exterior of the container. Verify information such as:

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- a. match the container number with the documentation;
- b.
- c. the owner;
- d. the capacity of the container;
- e. the size (i.e. forty foot; twenty foot, etc.);
- f. type of container;
- g. warning label(s), i.e. fumigants, dangerous goods, or controlled atmosphere;
- h. special handling procedures; and
- i. any other markings which may indicate special equipment required to handle the cargo or contents.

General - Pre-existing and/or Examination Damages

73. When damage to cargo is discovered, whether or not it is pre-existing or caused by the examination:

- a. notify the superintendent on duty;
- b. take photographs and record details of the damages in the TITAN examination report and your notebook;
- c. prepare a report for management indicating the nature of the damage (e.g. scraped, broken, crushed etc.), its extent, its suspected or actual cause, and include all supporting photographs; and
- d. consult with superintendent for further steps.

Note: Warehouse employees will follow local warehouse procedures and ensure all other appropriate personnel are notified.

74. In cases of pre-existing damage, CBSA officers will record all of the relevant information in their notebooks. Report any damages to a superintendent.

General - Container Examination Facility - Preparing for Examination

75. Test for volatile organic chemicals (such as fumigants and solvents). Ventilation may also be required in accordance to the Fumigant Program User Guide.

Note: For procedures to test for volatile organic chemicals (such as fumigants and solvents) please refer to the Fumigant Program User Guide at:

76. Ensure the container trailer is supported with a portable dolly leg (if required) and tires chocked prior to beginning the examination.

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General - Container Examination Facility - Conducting Examination

77. Open the container doors using proper opening procedures.
78. Once the doors are open, take photographs of the interior of the container and its cargo.

Note: Photographs may need to be submitted as evidence and they also assist in the reloading of goods as they were originally.

79. Examine cargo in accordance with CBSA policy and procedures.

Note: Refer to Part Four, Chapter Four, Commercial Shipment Examination Policy and Procedures.

80. Ensure proper cargo handling equipment is used when unloading any cargo.
81. Examining officers should be familiar with CBSA policy and procedures in regards to the discovery of contraband.

Note: Refer to Part Two, Enforcement Priorities.

82. Examining officers should be familiar with their local SOP's in regards to the discovery of contraband.
83. When safe and practical, a CBSA officer will conduct a thorough examination of the structure of the container.
84. Once all of the cargo is removed from the container, the container itself is to be examined. Systematically examine the interior as well as the exterior of the container. Pay close attention to void spaces as well as any inconsistencies.

General - Container Examination Facility - Conducting Examination Dockside (Pier) Examination

85. Make all the necessary arrangements with terminal personnel to prepare a safe examination area.
86. Determine if there is any work in progress in the examination area before proceeding to the location of the container.
87. Ensure the area of the examination is at a safe distance from any cargo handling and moving vehicles.
88. Take all necessary health and safety precautions based on the location of the container, any work being conducted in the area, and the stated contents of the

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container.

89. If the container is stacked or in an unsafe location, request the container be moved to a designated safe area.
90. When the container is being moved to an examination area make sure to stay a safe distance from the container and the machinery.

Note: this reduces the risk of being injured.

91. Ensure that the container is placed securely on the ground or other secure supporting surface.

Note: For procedures of opening container doors and conducting examination for dockside (Pier) examinations refer to the Fumigant Program User Guide online at:

92. Conduct a cursory examination of the contents at the tail of the container. Do not enter the container.
93. If a full de-stuff or any further examination is required, request the container be moved to a suitable facility, preferably a container examination facility.

General - Container Examination Facility - Conducting Examination Dockside (Pier) Examination - Travelling/Moving at the Terminal

94. CBSA officers need to be aware of the terminal policy and procedures for circulating and working at a container terminal before proceeding to the terminal area.

Note: Terminal policy and procedures can be obtained by contacting the terminal supervisor.

95. When circulating on foot or with a vehicle in a terminal, stay in areas that are designated for pedestrians or vehicles unless otherwise required for operational reasons.

96. Wear personal protective equipment at all times.

Note: This includes but is not limited to hard hats, high visibility vests and safety boots.

97. Never walk or drive under moving containers or where cargo is being moved overhead.

98. When driving in a vehicle, always activate the hazard or rotating lights.

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Container Examination

99. When driving in container rows, always drive down the centre of the row.
100. Park vehicles in designated areas of the terminal in accordance with terminal procedures when practical and safe to do so.

REFERENCES

Customs Act
Canada Labour Code, PART II
Canada Occupational Health and Safety Regulations
Container Contraband Examination Course
NJC Occupational Health and Safety Directive
Emergency Response Guide Book
Respiratory Protection Program
Fumigant Program User Guide
Policy on Uniformed CBSA officers and/or Superintendents Working at Off-site Locations
Doubling-up Policy for CBSA Ports of Entry

ENFORCEMENT MANUAL

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 6

COMMERCIAL AIRCRAFT EXAMINATION POLICY AND PROCEDURES

2013-02-21

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POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to conduct examinations of aircraft in accordance with the provisions set out in the *Customs Act* and in recognition of the requirement for safety.

DEFINITIONS

2. Refer to Part 11 – Glossary.

AUTHORITIES

Customs Act

3. Section 11 - (1) Subject to this section, every person arriving in Canada shall, except in such circumstances and subject to such conditions as may be prescribed, enter Canada only at a customs office designated for that purpose that is open for business and without delay present himself or herself to an officer and answer truthfully any questions asked by the officer in the performance of his or her duties under this or any other Act of Parliament. (2) Subsection (1) does not apply to any person who has presented himself or herself outside Canada at a customs office designated for that purpose and has not subsequently stopped at any other place prior to his or her arrival in Canada unless an officer requires that person to present himself or herself to the officer.
4. Section 12 (1) Subject to this section, all goods that are imported shall, except in such circumstances and subject to such conditions as may be prescribed, be reported at the nearest customs office designated for that purpose that is open for business.
5. Section 13 – Every person who reports goods under section 12 inside or outside Canada or is stopped by an officer in accordance with section 99.1 shall (a) answer truthfully any question asked by an officer with respect to the goods; and (b) if an officer so requests, present the goods to the officer, remove any covering from the goods, unload any conveyance or open any part of the conveyance, or open or unpack any package or container that the officer wishes to examine.

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6. Section 15 – Any person who finds or has in his possession goods that have been imported and who believes on reasonable grounds that the provisions of this or any other Act of Parliament that prohibits, controls or regulates the importation of goods have not been complied with in respect of the goods or that duties levied thereon have not been paid shall forthwith report to an officer that he has found the goods or has them in his possession.
7. Section 21 – Every person who transports or causes to be transported within Canada goods that have been imported but have not been released shall, where an officer so requests, afford the officer free access to any premises or place under his control that is attached to or forms part of any place where such goods are reported, loaded, unloaded or stored, and open any package or container of such goods or remove any covering therefrom.
8. Section 98 - An officer may search (a) any person who has arrived in Canada, within a reasonable time after his arrival in Canada, (b) any person who is about to leave Canada, at any time prior to his departure, or (c) any person who has had access to an area designated for use by persons about to leave Canada and who leaves the area but does not leave Canada, within a reasonable time after he leaves the area, if the officer suspects on reasonable grounds that the person has secreted on or about his person anything in respect of which this Act has been or might be contravened, anything that would afford evidence with respect to a contravention of this Act or any goods the importation or exportation of which is prohibited, controlled or regulated under this or any other Act of Parliament.

For ease of reference, articles forming part of Section 99 are paraphrased.

9. Sub-section 99(1) (a) – Authorizes CBSA officer's to examine goods and any containers or conveyance that may contain goods upon importation and up to the time of release.
10. Sub-section 99(1) (c) – Authorizes CBSA officers to examine any goods that have been reported under Section 95 at any time up to the time of exportation.
11. Subsection 99(1) (e) - Authorizes CBSA officers who suspect on reasonable grounds that the *Customs Act* or the regulations or any other act of Parliament might be contravened, to open or cause to be opened any package or container to examine the goods.
12. Subsection 99(1) (f) - Authorizes the examination of any goods and conveyance a CBSA officer suspects on reasonable grounds contains goods that are in contravention of the *Customs Act*.

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Note: These provisions include the authority to examine in-transit aircraft that have landed in Canada and the baggage of its passengers, regardless of the reason for landing. Additionally, it also pertains to situations where a conveyance has been released and a CBSA officer wishes to examine it or where a conveyance is being exported and no goods have been reported under Section 95.

13. Section 101 - Goods that have been imported or are about to be exported may be detained by an officer until he is satisfied that the goods have been dealt with in accordance with this Act, and any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods, and any regulations made thereunder.
14. Subsection 103(4) - An officer may at any time take custody of goods or a conveyance left in the custody of any person pursuant to subsection (1) and shall, where the forfeiture of the goods or conveyance is final, take custody thereof.
15. Subsection 110(1) - An officer may, where he believes on reasonable grounds that this Act or the regulations have been contravened in respect of goods, seize as forfeit (a) the goods; or (b) any conveyance that the officer believes on reasonable grounds was made use of in respect of the goods, whether at or after the time of the contravention. (2) An officer may, where he believes on reasonable grounds that this Act or the regulations have been contravened in respect of a conveyance or in respect of persons transported by a conveyance, seize as forfeit the conveyance. (3) An officer may, where he believes on reasonable grounds that this Act or the regulations have been contravened, seize anything that he believes on reasonable grounds will afford evidence in respect of the contravention. (4) An officer who seizes goods or a conveyance as forfeit under subsection (1) or (2) shall take such measures as are reasonable in the circumstances to give notice of the seizure to any person who the officer believes on reasonable grounds is entitled to make an application under section 138 in respect of the goods or conveyance.
16. Subsection 153.1 - No person shall, physically or otherwise, do or attempt to do any of the following (a) interfere with or molest an officer doing anything that the officer is authorized to do under this Act; or (b) hinder or prevent an officer from doing anything that the officer is authorized to do under this Act.
17. Section 159 - Every person commits an offence who smuggles or attempts to smuggle into Canada, whether clandestinely or not, any goods subject to duties, or any goods the importation of which is prohibited, controlled or regulated by or pursuant to this or any other Act of Parliament.

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18. Subsection 160.1 Every person who contravenes section 153.1 is guilty of an offence and, in addition to any penalty otherwise provided, is liable on summary conviction to (a) a fine of not less than \$1,000 and not more than \$25,000; or (b) both a fine described in paragraph (a) and imprisonment for a term not exceeding twelve months.

PURPOSE AND SCOPE

19. The purpose of this policy is to provide guidelines to CBSA officers when conducting aircraft examinations while ensuring the integrity and airworthiness of the aircraft.
20. It is also the purpose of this policy to emphasize the importance of health and safety when examining aircraft, or working in close proximity to them.
21. This policy applies to all CBSA personnel.

BACKGROUND

22. The access to aircrafts arriving from all over the world occasionally draws some airport employees into internal conspiracies for criminal organizations involved in contraband smuggling through international airports. It is the CBSA's responsibility to combat the illegal smuggling operations of these organizations.
23. The CBSA frequently finds contraband placed within aircrafts by individuals that have detailed knowledge of, and access to the planes. Examples of concealment methods include the
- In an effort to combat this method of smuggling, the CBSA has developed an aircraft examination course that provides CBSA officers with detailed knowledge of aircrafts and smuggling concealment methods.

POLICY GUIDELINES

General

24. To engage cooperation between local CBSA offices and air carriers, a memorandum of understanding (MOU's) may be created, as desirable, in order to identify the manner in which the CBSA offices will contact the carrier

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to inform them of examinations, or request the presence of maintenance personnel. These agreements are drafted and agreed to at the local level, using a national template that can be found in Appendix B.

25. Examinations of aircraft will only be conducted by CBSA officers who have completed the CBSA Commercial Aircraft Examination Course.
26. CBSA officers will take all the necessary precautions with respect to aviation safety before, during and after an aircraft examination.
27. Aircraft operators will be informed when examinations are being conducted.
28. The examination of aircrafts will vary in intensity based on the building of indicators and supporting evidence discovered.
- 29.
30. Any parts of the aircraft that are dismantled, removed or displaced by a BSO during an examination must be reattached or replaced at the conclusion of the examination.
- 31.
32. When the examination of an aircraft involves the removal of access panels or components, CBSA officers who are not comfortable performing this task, can make arrangements to secure the assistance of a qualified aircraft mechanic.
33. When a CBSA officer suspects that goods are concealed behind or inside panels, seats, carpets, tires, etc., they will take the appropriate steps to have the parts removed and perform a complete inspection. This may involve the assistance of a qualified mechanic.

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Note: The use of contraband detection equipment such as inspection mirrors and flashlights, fiberscopes, probes, pole cameras, detector dog teams, etc. may assist in the examination of visually limited areas of an aircraft. Intrinsically safe flashlights and non-magnetic screwdrivers are recommended.

34. Even if the examination does not require a mechanic, CBSA officers may permit and encourage operators to have a qualified mechanic present to assist in the examination. At all times, CBSA officers are to exercise their discretion given the circumstances presented at the time.
35. The CBSA Officer may search in-transit aircraft arriving from foreign countries and stopping to refuel. The intensity of the search will be based on the building of indicators, supporting evidence and / or information or intelligence received.
36. CBSA officers will not proceed with an examination of a foreign military aircraft unless requested by another department or agency. The reasons for the examination are to be confirmed by a CBSA senior manager.
37. Upon completion of the examination, the Notice of Aircraft Inspection (K158) will be completed, indicating all areas of the aircraft that were examined. It is recommended that the types of contraband detection equipment used during the examination be noted, in the comment section of the form. (See *Appendix A.*)

Note: The 158 should be completed as directed in the Aircraft Search Course

38. A copy of the completed form must immediately be given to the airline mechanic. If a mechanic is not available, the form is to be left on the flight deck of the aircraft. A copy of the form will be retained on file at the CBSA office that carried out the examination.
39. If a CBSA officer has been hindered or obstructed in the performance of his or her duty, the officer may arrest crew or passengers for obstructing or hindering with an examination and remove them from the area.

Note: Refer to Part 6, Chapter 1, Arrest & Detention Policy & Procedures and Part 9, Chapter 1 and 2, Prosecution Policy & Procedures.

40. Any problem encountered in following this examination policy is to be reported immediately to the responsible superintendent. .

Health and Safety

41. Due to the inherent unknown risk factor (Officer Safety) that exists in the examination of aircrafts and for the purpose of presenting evidence in court, officers will always work in pairs while on board an aircraft.
42. When conducting examinations, officers will take measures to protect the health and safety of the public and themselves.
43. CBSA officers may tactically reposition _____ from any situation during an examination they believe poses a significant and unavoidable risk to the public and/or themselves.
44. At all times while onboard or around an aircraft, CBSA officers are to continually perform a risk assessment of the work area and take appropriate actions to protect themselves against any present and/or potential hazards. CBSA officers will report any identified health and safety issues immediately to the Superintendent on duty.
45. While on board, officers will communicate with each other using a radio communication system. Regular and frequent radio checks should be conducted to ensure effective and efficient communication and ensure that there are no health and safety concerns on board.
46. While working on airside operations or offsite, CBSA officers will wear CBSA issued protective equipment, including but not limited to protective footwear, high-visibility vests and hearing protection.
47. In cases where an examination is being conducted specifically for prohibited goods such as drugs or weapons, precautionary measures must be taken to secure the goods and ensure the examining officer's safety.
48. Officers will use tools in the fashion in which they were intended. As such, when using tools, officers, will exercise caution and adhere to prescribed health, safety and ergonomic standards (e.g. intrinsically safe flashlight, non-magnetic screwdriver).

ROLES AND RESPONSIBILITIES

Regional Operations

Border Services Officers (BSO)

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49. BSOs are responsible for:

- a) Abiding by this policy and the procedures;
- b) Completing the Commercial Aircraft Examination Course prior to undertaking any of these functions;
- c) Conducting examinations in accordance with the training given, and in accordance with the commercial aircraft examination course;
- d) Being vigilant in protecting their health and safety and that of the public;
- e) Taking all necessary precautions against all identified hazards before, during, and after an aircraft examination;
- f) Maintaining in safe and good working order personal tools, personal protection equipment and shared equipment used for examinations including contraband detection equipment;
- g) Reporting any problems encountered before, during or after an examination;
- h) Completing and delivering the Notice of Aircraft Inspection (form K158) to a qualified mechanic or airline operator or representative; and
- i) Reporting any problems encountered while performing their duties to the superintendent and/or manager.

Regional Management

50. Regional Management for Air Operations will be responsible for:

- a) Ensuring adherence to the policies and procedures related to aircraft examinations;
- b) Ensuring officers receive the required training and equipment;
- c) Guiding and supporting CBSA officers in the performance of their duties;
- d) Promoting and monitoring procedures and health and safety requirements and correcting any breaches; and
- e) Monitoring form K158 for completeness and accuracy.

Operations Branch

Port of Entry Operations - Commercial Operations Unit

51. Commercial Operations, Operations Branch will be responsible for:

- a) Ensuring the Policy, Standard Operation Procedures and Enforcement Manual chapters relevant to aircraft examination are carried out in the field; and
- b) Fostering open lines of communication between regional operations and headquarters.

Programs Branch

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Commercial Border Programs – Commercial Secondary Unit

52. The Commercial Secondary Unit of the Programs Branch is responsible for:

- a) Providing program guidance through structured national guidelines, national policies and national procedures;
- b) Developing, implementing, maintaining and monitoring policies for secondary commercial processing in all modes;
- c) Developing, implementing, maintaining and monitoring policies and protocols for search and seizures and detention;
- d) Providing policy direction for course content;
- e) Identifying training needs; and
- f) Monitoring adherence to this policy and procedures by the regions.

Detection Program and Policy Unit

53. The Detection Program and Policy Unit will be responsible for:

- a) Developing, implementing, maintaining and monitoring national policies, processes, regulations and legislation related to detection tools and technology;
- b) Providing functional direction to the field. Conducting research for tools and equipment that meet the CBSA's air operation's needs;
- c) Providing detailed information to the Program Authority on detection technology tools that meet Occupational Health and Safety requirements and pertain to the air mode;
- d) Providing guidance to the field pertaining to the tools and instruments used in contraband detection;
- e) Monitoring detection technology performance, effectiveness and use at a national scale; and
- f) Designing policies on detection technology.

Human Resources Branch

Enforcement Learning Programs

54. The Enforcement Learning Programs is responsible for:

- a) Developing and designing training related to aircraft examination.
- b) Delivering the Train the Trainer - Commercial Aircraft Examination Course.
- c) Monitoring the delivery of the Commercial Aircraft Examination Course by certified instructors to BSO's.

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PROCEDURES

Arrival and Boarding

55. CBSA officers driving to a ramp side aircraft examination should have successfully completed the required training to circulate safely on the tarmac and surrounding roadways.
56. Vehicles should be parked in an area where they will not interfere with traffic and where it is safe to do so.
57. Before any ramp side examination, BSOs should ensure the following:
 - a) wear CBSA approved clothing and footwear;
 - b) ensure proper tools are available to conduct examination;
 - c) complete a risk assessment;
 - d) ensure your communications equipment is functional and adequate;
 - e) contact the office to inform time of arrival;
 - f) keep the office informed of progress of examinations and have; scheduled check in calls for high risk situations; and
 - g) ensure it is safe to board the aircraft.
58. While approaching the aircraft, BSOs should be aware of their surroundings as well as any indicators that may be present.
59. Advise your superintendent and co-workers of the presence of potential health and safety issue.

Ramp Side and off site Aircraft Examinations

60. Advise the owner/operator/captain what is required from him/her, the crewmembers and passengers.
61. Provide the opportunity for all persons to fulfill reporting obligations (i.e., ensure all passengers are thoroughly questioned).

62. Review documentation and proceed with the pilot's interview.
63. Compare the information provided by the pilot to the aircraft's documentation and targeting information

Note: Logbooks can yield significant amount of information and should be examined.
64. Arrange with the owner/operator/captain for access to all areas if required.
65. Advise your superintendent and co-workers in the event of the presence of a potential health and safety issue.
66. Inform the owner/operator/pilot when an intensive examination is about to be conducted and when it is safe to do so, request that he/she be present throughout the examination.
67. Address questions to the owner/operator/pilot on all areas being examined.
68. Request the services of an aircraft mechanic if deemed necessary.

Note: An intensive examination can involve the dismantling of parts, which could affect the aircraft's safety and operation, when appropriate an aircraft mechanic should be present.
69. Use a systematic and thorough approach for all examinations no matter how large or small the area.
70. Use all tools available whenever possible to avoid dismantling parts and to reduce the chances of breaking any components.
71. Immediately report any damage and upon discovery of prohibited, restricted, controlled, or regulated goods to the pilot.
72. Immediately advise the superintendent upon discovering prohibited, restricted, controlled or regulated goods or in the event a seizure will be taking place.
73. Report any problems encountered in following this policy and procedures or in the performance of an examination to the responsible CBSA superintendent or manager.
74. CBSA officers will complete a report for all unusual examinations and forward it in a timely manner to the Intelligence Officer.

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Note: For non-automated ports, the examination report must be completed manually.

75. Find a vacant spare room at the airport when it is necessary to conduct a personal search of a person.

Note: Refer to Part 6, Chapter 7, Personal Search Policy and Procedures and follow the guidelines provided for all personal searches.

76. Make the room or area as safe and secure as possible before proceeding with the personal search.

Personal Search

77. Immediately advise the Rummage Coordinator upon discovery of prohibited, restricted, controlled, or regulated goods

78. The BSO will find a vacant spare room at the airport when it is necessary to conduct a personal search of a person.

Note: Refer to Part 6, Chapter 7, Personal Search Policy and Procedures and follow the guidelines provided for all personal searches.

79. Make the room or area as safe and secure as possible before proceeding with the personal search.

80. Immediately advise the superintendent upon discovering prohibited, restricted, controlled or regulated goods or when a seizure, arrest, or detention is taking place.

81. Advise the pilot, when deemed necessary, upon discovery of prohibited, restricted, controlled, or regulated goods when deemed necessary.

82. CBSA officers will complete a report for all unusual examinations and forward it in a timely manner to the Intelligence Officer.

Note: For non-automated ports, the examination report must be completed manually.

Pre-existing or Examination Damages

83. CBSA officers will take photographs before and after examinations when:

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- a) there is pre-existing damage;
 - b) it is likely there will be a complaint as a result of conducting an examination;
 - c) they suspect that damage may be caused during an examination;
 - d) they are going to dismantle or remove permanent fixtures or parts;
 - e) they are going to drill, cut, or break an item to determine if it is concealing goods; or
 - f) there was unexpected accidental damage that resulted from an examination.
84. In cases of pre-existing damage or when damage is caused by an examination, CBSA officers will record all of the relevant information in their notebooks
85. When an examination causes damage, CBSA officers will prepare a report for management indicating the nature and extent of the damage, and its suspected or actual cause.
86. Complete the Notification of Aircraft Inspection (K158) including notes on all the areas of the aircraft that were examined and the nature and extent of the damage encountered or incurred.
87. When damage is encountered or incurred, CBSA officers will advise the airline mechanic and hand over the white copy of the K158. If the airline mechanic is unavailable, the copy is to be left on the flight deck of the aircraft.
88. The blue and yellow copies of the K158 will be kept on file at the CBSA office that carried out the examination. The yellow copy may be requested by CBSA Headquarters on a case by case basis.

REFERENCES

Customs Act
Customs Commercial Aircraft Examination Course

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Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 6

COMMERCIAL AIRCRAFT EXAMINATION POLICY AND PROCEDURES

Appendix A

NOTIFICATION OF AIRCRAFT INSPECTION (K158)

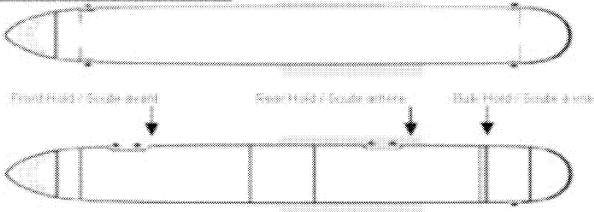
2013-02-21



Canada Border
Services Agency

Agence des services
frontaliers du Canada

Appendix A

NOTICE OF AIRCRAFT EXAMINATION / AVIS D'INSPECTION D'UN AÉRONEF			
Date of Examination / YYY-MM-DD Date de l'examen / AAAA/MM/JJ		Aircraft Registration Number / N° d'immatriculation de l'aéronef	
Airline and Flight Number / Transporteur aérien et n° de vol			
Cabin Search / Fouille de la cabine Time Commenced / heure - début		Airport / Aéroport	Mechanics present / Mécaniciens présents Yes / oui <input type="checkbox"/> No / non <input type="checkbox"/>
Time Ended / heure - fin			
Exterior Search / Fouille de l'extérieur Time Commenced / heure - début		Team Leader / Chef d'équipe	CBSA Contact Telephone Number / ASFC n° de téléphone au contact
Time Ended / heure - fin			
AIRCRAFT DIAGRAM / SCHÉMA DE L'AÉRONEF 		CABIN / CABINE HOLDS / SOULE	
Areas examined by Canada Border Services officers / Secteurs examinés par les agents des Services frontaliers du Canada			
COCKPIT / POSTE DE PILOTAGE Panel Accessed / Panneaux visités: <input type="checkbox"/> YD <input type="checkbox"/> RR If Yes-List / Si oui-Listez: _____ EXTERIOR OF AIRCRAFT / EXTÉRIEUR DE L'AÉRONEF Fuel Access Panel / Panneau d'accès au carburant: <input type="checkbox"/> YD <input type="checkbox"/> RR Panels / Hatches Opened / Panneaux/trappes ouvertes: <input type="checkbox"/> YD <input type="checkbox"/> RR If Yes-List / Si oui-Listez: _____ CARGO HOLDS EXAMINED / SOULES À FRET EXAMINÉES Front Hold / Soule avant: <input type="checkbox"/> YD <input type="checkbox"/> RR Rear Hold / Soule arrière: <input type="checkbox"/> YD <input type="checkbox"/> RR Bulk Hold / Soule à vrac: <input type="checkbox"/> YD <input type="checkbox"/> RR Air Stairs / Escaliers intégrés: <input type="checkbox"/> YD <input type="checkbox"/> RR Spares / Rechanges: <input type="checkbox"/> YD <input type="checkbox"/> RR Catering Equipment / Équipement de traiteur: <input type="checkbox"/> YD <input type="checkbox"/> RR Baggage Examined Arrived / Bagages examinés - Côté piste: <input type="checkbox"/> YD <input type="checkbox"/> RR Cargo Examined Arrived / Fret examiné - Côté piste: <input type="checkbox"/> YD <input type="checkbox"/> RR Tail Section / Section arrière: <input type="checkbox"/> YD <input type="checkbox"/> RR Lower Galley / Cuisine inférieure: <input type="checkbox"/> YD <input type="checkbox"/> RR Panels Removed - Accessed / Panneaux retirés - visités: <input type="checkbox"/> YD <input type="checkbox"/> RR If Yes-List / Si oui-Listez: _____	CABIN / CABINE Galleys / Cuisines: <input type="checkbox"/> YD <input type="checkbox"/> RR Ceiling compartments / Compartiments plafonds: <input type="checkbox"/> YD <input type="checkbox"/> RR Life Raft Compartment / Annexe pour canot de sauvetage: <input type="checkbox"/> YD <input type="checkbox"/> RR Oxygen Panels / Panneaux d'oxygène: <input type="checkbox"/> YD <input type="checkbox"/> RR Crew Quarters / Quartiers de l'équipage: <input type="checkbox"/> YD <input type="checkbox"/> RR Passenger Doors / Portes des passagers: <input type="checkbox"/> YD <input type="checkbox"/> RR Panel Accessed / Panneaux visités: <input type="checkbox"/> YD <input type="checkbox"/> RR If Yes-List / Si oui-Listez: _____ LAVATORIES / TOILETTES Toilet Shields / Gardes de protection des toilettes: <input type="checkbox"/> YD <input type="checkbox"/> RR Sink Cabinet / Armoire sous l'évier: <input type="checkbox"/> YD <input type="checkbox"/> RR Oxygen Panels / Panneaux d'oxygène: <input type="checkbox"/> YD <input type="checkbox"/> RR Ammies / Commodes: <input type="checkbox"/> YD <input type="checkbox"/> RR Panel Accessed / Panneaux visités: <input type="checkbox"/> YD <input type="checkbox"/> RR If Yes-List / Si oui-Listez: _____ AVIONICS BAYS / COMPARTIMENTS AVIONIQUES Spares / Rechanges: <input type="checkbox"/> YD <input type="checkbox"/> RR Panels Accessed / Panneaux visités: <input type="checkbox"/> YD <input type="checkbox"/> RR If Yes-List / Si oui-Listez: _____		
COMMENTS / COMMENTAIRES (DAMAGES/ DOMMAGES): _____ _____ _____ _____			
Notice Given to Pilot / Titre Avis donné à (nom et titre) : _____		Airline Signature of Receipt Signature du transporteur aérien : _____	

1398 (2007)
Printed in Canada / Imprimé au Canada

White/Blanc
Green/Vert
Blue/Bleu

- Airline Copy/Transporteur aérien
- CBSA/ASFC
- Border/Frontière

Canada

2013-02-21

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 6

COMMERCIAL AIRCRAFT EXAMINATION POLICY AND PROCEDURES

Appendix B

MEMORANDUM OF UNDERSTANDING TEMPLATE

2013-02-21

Agreement between Canada Border Services Agency and “*Canadian Airline Operator*”

This agreement on Standard Operating Procedures endeavors to strengthen the lines of communication and cooperation between the Canada Border Services Agency (CBSA) and **(Airline Name)** in regards to the examination of **(Airline Name)** aircraft at **(Name of Airport)** Airport.

The CBSA will contact **(Airline Name)** maintenance at XXX-XXX-XXXX **(Local airline maintenance contact phone number)** if they require assistance in the removal of any panels. **(Airline Name)** maintenance will dispatch a mechanic to assist where required in the removal and replacement of panels and electrical components.

The Notice of Customs Inspection (K158) will identify the time and recipient of the call to the **(Airline Name)** as well as the arrival time of the mechanic. The K158 form will be used by CBSA to notate the removed panels by designating them by area, for example "rear hold back wall panel"; or "port" or "starboard side panel 3", meaning the third panel from the back of the hold. For consistency the side panels will be counted from the rear wall of the hold. Upon completion of the examination, the K158 is to be given to the mechanic, or if none attending, left on the flight deck (cockpit area) of the aircraft.

(Airline Name) should note the approximate time of all requests for assistance from CBSA in their daily synopsis. Both parties will use these times to monitor the effectiveness of this arrangement.

It is anticipated that this new procedure will improve the communication and cooperation between the CBSA and the **(Airline Name)** and further enhance the good working relationship between the two organizations. This agreement is subject to amendment with the consent of both parties. Any such amendments will be put in writing in a new agreement. This agreement is also subject to termination by either party upon written notice by either party.

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EN Part 4 Chapter 8

Commercial Marine Vessel Examination

ENFORCEMENT MANUAL

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 8

**COMMERCIAL MARINE VESSEL EXAMINATION POLICY AND
PROCEDURES**

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POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to conduct examinations of commercial marine vessels in accordance with the provisions set out in the *Customs Act* and in recognition of the requirement for safety aboard and around vessels.

DEFINITIONS

2. Refer to Part 11 – Glossary.

AUTHORITIES

Customs Act

3. Section 11.2 - Allows the designation of areas as customs controlled areas.
4. Section 11.3 - Owners or operators of customs controlled areas may grant access to authorized or prescribed persons only.
5. Section 13 – Importers, exporters, transporters, and their representatives are obligated to answer truthfully questions asked with respect to commercial shipments and present the goods, remove any covering, unload any conveyance, and open or unpack any package or container that a CBSA officer wishes to examine.
6. Section 99(1) (a) – Authorizes CBSA officers to examine imported goods, including any container or conveyance that may contain goods, up to the time of release.
7. Section 99(1) (c) – Authorizes CBSA officers to examine any goods that have been reported under Section 95 at any time up to the time of exportation.

Note: These provisions include the authority to examine in-transit vessels that have docked in Canada and the baggage of their passengers regardless of the reason for docking.

8. Section 99(1) (f) – Authorizes CBSA officers to stop, board, and search any conveyance or any goods it is carrying, and direct that the conveyance be moved to a customs office or other suitable location for search and

examination where the officer suspects on reasonable grounds that the Act or any Act of Parliament they administer or enforce has been or might be contravened in respect of the conveyance or the goods.

Note: This reference pertains to situations where a conveyance has been released and an officer wishes to examine it or where a conveyance is being exported and no goods have been reported under Section 95.

9. Section 153.1 – Authorizes the officer to arrest an individual that is physically or otherwise interfering with the officer's work or molesting the officer in the performance of his/her duties, or attempting to do so.

Canada Shipping Act

10. The *Canada Shipping Act* regulates the shipping industry. It gives CBSA officials the right to board vessels, review documentation, and advise the Canadian Coast Guard and/or Ship Safety Branch of Transport Canada of any discrepancies or problems. It also requires the Captain to produce documentation for CBSA officials.

PURPOSE AND SCOPE

11. The purpose of this policy is to provide guidelines to CBSA officers when conducting marine vessel examinations and shipboard confined space entries on commercial vessels. These types of examinations are also referred to as vessel rummage and confined space entry.
12. It is also the purpose of this policy to emphasize the importance of health and safety when boarding and examining vessels or working in close proximity to them.
13. This policy applies to all CBSA personnel.

BACKGROUND

14. In 1996, following a gap analysis on marine examination practices and marine health and safety issues, the CBSA established the Marine Centre of Expertise (MCE) in Halifax, Nova Scotia, as the CBSA's national training center for employees working in the marine environment. The MCE's function is to provide formal, standardised and approved training to CBSA personnel working in this mode.

15. The core curriculum delivered at the MCE includes marine in service, vessel rummage, confined space entry, Remote Operating Vehicle (ROV) as well as container and pleasure craft examinations. In doing so, the MCE plays a central role in helping the CBSA meet its strategic objective to keep Canada's population safe and secure. All programs meet the *Canada Labour Code* Part II, Canada Occupational Health and Safety Regulations and the National Joint Council Occupational Health and Safety Directive and meet the CBSA's obligation to provide a safe working environment for its employees at all times.
16. As a result of the courses delivered by the MCE, Border Services Officers (BSOs) have become proficient at conducting methodical vessel examinations in a professional and safe manner and have developed significant knowledge in identifying border related risks found onboard commercial marine vessels.

POLICY GUIDELINES

General

17. The examination of a commercial marine vessel is divided into two distinct operations: Vessel Rummage and Confined Space Entry.
18. Vessel Rummages and Confined Space Entry examinations are conducted by marine operations BSOs and superintendents.
19. To conduct a vessel rummage, employees must have successfully completed the Vessel Rummage Course (VRC) delivered at the MCE.
20. Either the Marine In-Service training or Vessel In-Service training are a prerequisite to attending the VRC and both are delivered by the MCE.
21. CBSA officers who have received the Marine In-Service/Vessel In-Service training and who are accompanied by a VRC trained Officer are allowed to board vessels for bond audits, crew musters and general rummages of the accommodations area only. Any other CBSA employee that is not boarding the vessel for the purpose of conducting an examination is required to be accompanied by a VRC trained officer at all times.
22. CBSA Intelligence Officers, Criminal Investigators and Inland Enforcement Officers who board a vessel for the purposes of conducting interviews, investigating suspected offences, and recording evidence are not required

to complete the Marine In-Service or Vessel In-Service Courses. However, they are required to board vessels with a VRC trained officer for health and safety reasons.

23. CBSA employees attending pre-arranged tours, meetings, or media events aboard a vessel are not required to complete the Marine In-Service or Vessel Rummage Courses, but are required to board and remain with a VRC trained officer for health and safety reasons.
24. A *Rummage Information and Safety Checklist* (K154) must be completed for all vessel examinations and copied to the Targeting Unit and to file. (see appendix A)
25. All vessel examination results will be recorded in the applicable system.
26. In the event an officer must arrest a crew member or a dockworker for refusing to comply with an examination or obstructing an examination, the officer must remove the person under arrest from the area.

Note: Refer to Part 6, Chapter 1, Arrest and Detention and Part 9, Chapter 2, Prosecution Procedures.

27. CBSA officers will complete a report for all unusual examinations and forward it in a timely manner to the Intelligence Officer through the Occurrence Reporting System (ORS).

Health and Safety

28. Due to the inherent unknown risk factor that exists in the marine environment, a minimum of two officers are required to board any vessel.
29. Due to environmental hazards and for the purpose of presenting evidence in court, officers will always work in pairs while on board a vessel.
30. While on board, officers will communicate with each other using a radio communication system. Regular and frequent radio checks should be conducted to ensure effective and efficient communication and ensure that there are no health and safety concerns on board.
31. While on board, a minimum of one person must have a cellular phone for the purpose of summoning outside help if needed. Areas where cellular phones are prohibited must be determined with the Captain upon boarding the vessel

32. In the event of an emergency while on board, CBSA personnel should obey the direction of the vessel's crew members.
33. Officers are permitted to tactically reposition _____ from any situation during an examination if they believe it poses a significant and unavoidable risk to the public and/or themselves.
34. CBSA personnel are to continually perform a risk assessment of the work area at all times while onboard or around a vessel and take appropriate actions to protect themselves against any present and/or potential hazards, including using/wearing personal protective equipment (PPE). Officers will report any identified health and safety issues immediately to the Rummage Coordinator.
35. Officers will wear the personal protective equipment required for the type of examination that is being conducted, which will be provided. At all times while working dockside or on deck, officers will wear CBSA approved protective footwear, hardhats, and high-visibility vests.
36. Any CBSA employee that is not boarding the vessel for the purpose of conducting an examination is still required to wear approved protective footwear, hardhats and high visibility vests. If need be, additional personal protective equipment must be worn according to environmental hazards on or around the vessel to ensure employee health and safety.
37. Life vests and buoyancy devices must be non-cumbersome and meet the requirements of the Canadian General Standards Boards for Personal Flotation Devices.
38. Safety equipment must meet the requirements established by the *Canada Labour Code* Part II, Canada Occupational Health and Safety Regulations, Part XII, Safety Materials, Equipment, Devices and Clothing and the National Joint Council (NJC) Occupational Health and Safety Directive, Part XIII, Personal Protective Equipment and Clothing. The safety equipment must also be CSA approved where applicable and intrinsically safe when worn on board a tanker or in any other explosive environment onboard a ship.
39. Marine Officers must be fit tested for respiratory protection by a qualified fit tester every two years, or, any time there has been a significant weight gain or loss.
40. Officers must complete training every 2 years on the use, care and maintenance of respirators and hearing protection, and follow procedures of the CBSA Hearing Conservation and Respiratory Protection Programs.

41. In extremely cold weather conditions and in areas where an accidental fall in the water presents a risk of hypothermia, suitable insulated protective clothing will be provided to employees.

Rummage Coordinator

42. Prior to boarding, the rummage coordinator, will conduct a health and safety risk assessment of the vessel and share its details with the examination team at a pre-boarding briefing session.
43. Requirements outlined in the *National Joint Council Occupational Health and Safety Directive Part XIII - Personal and Protective Equipment and Clothing* should be met as well as requirements outlined in Part XII, Safety Materials, Equipment, Devices and Clothing of the Canada Occupational Health and Safety regulations. (see Appendix B)
44. Prior to boarding, the rummage coordinator will ensure all required personal protection equipment is available and in good repair for the examination team.
45. Upon boarding a vessel, the Rummage Coordinator will immediately meet with the Captain and complete the required sections of *the Rummage Information and Safety Checklist* (K154).
46. Following the meeting with the Captain, the Rummage Coordinator will share vessel's emergency procedures, identified hazards and related precautions with the search team in a pre-rummage briefing.
47. The pre-rummage briefing's objectives are:
 - a) to determine the sound of the general alarm;
 - b) to determine the sound of the fire alarm and what type of firefighting system is used onboard;
 - c) to determine a muster point in case of emergency;
 - d) to determine if watertight doors are present and which doors automatically lock down in the case of an emergency;
 - e) to determine if there are any health problems on board the vessel, or any concerns relating to the vessel or the crew;
 - f) to determine the presence of asbestos or any asbestos containing materials;

- g) to identify emergency evacuation routes and exits;
 - h) to request and make notes on instructions from the Captain pertaining to the appropriate steps the examination team members should take in case of an emergency; and
 - i) To identify the location of fire extinguisher, axes, hoses, etc.
- 48. The Rummage Coordinator will obtain, when available, a copy of the ship's General Arrangement plan depicting the location of all emergency equipment and escape routes.
 - 49. The Rummage Coordinator will make arrangements for suitable lifeboats to be brought to the site prior to undertaking any vessel examination at sea where there is insufficient space for team members on motorized lifeboats.
 - 50. The Rummage Coordinator will arrange with the Captain for blocked evacuation exits to be cleared prior to undertaking any vessel examination.
 - 51. The Rummage Coordinator will brief all CBSA personnel on the identified hazards and the health and safety measures that must be taken when they are in a refinery plant. Emergency Escape Breathing Devices must be included in Officers Personal Protective Equipment in refineries and on board tankers carrying petroleum products.
 - 52. Working within a refinery exposes officers to additional hazards. It is recommended that the Rummage Coordinator meet with the local refinery representative prior to the ship's visit to determine the safety measures that must be followed while officers are in a refinery plant

Vessel Rummages

- 53. Officers may search the Captain's cabin as they would any other area of the ship and will do so in a professional manner and with respect for the Captain's privacy.
- 54. Officers may request access to the Captain's safe to verify its contents.
- 55. As the safe may contain large sums of money for the crew's wages, ships' stores and other business transactions, it is required that two officers be present for the duration of the verification.

56. Officers will request that the Captain take possession of any money in the safe and count it prior to returning the money to the safe and locking it.

Note: Cargo ships and cruise ships (including the crew, passengers and stores thereon) do not have to report currency or monetary instruments totalling or in excess of \$ 10,000 if they have a final destination outside of Canada and will not be spending or leaving any more than \$ 10,000 while in Canada.

57. Some shipping lines consider the Captain's safe foreign soil and instruct the Captain to refuse access to it. It is the CBSA's policy however that it is not foreign soil or exempt from verification. Should this situation arise, it will be the rummage coordinator's decision to pursue this matter or not, given the circumstances and indicators
58. Examinations of crew quarters will be done in a professional manner and with respect for the crew members' privacy.
59. Examinations of running pieces of machinery or electrical components may require the presence of one of the vessel's engineers or electrician, particularly in the engine room. For all inspections requiring the presence of an engineer, refer to the guidelines contained in the MCE Practical Manual.
60. Vessel Rummage trained officers are instructed on how to open and inspect machinery in the engine room or in any other location on board the vessel.
61. In order to mitigate the chance of electrical shock, officers must ensure that they do not break the plane of electronic panels and other electrical components by means of examining tools and/or body parts.
62. When working on a tanker, specific precautions must be taken to eliminate the risk of fire and explosion such as:
 - a) using only flashlights that have been approved by a competent authority for use in flammable atmosphere;
 - b) using only portable radios that are intrinsically safe;
 - c) using intrinsically safe hearing protectors which are integrated with radio systems;
 - d) smoking only in areas designated by the Master of the ship;
 - e) completely forbidding any smoking or naked lights (open flame) on decks and any other places where there is a risk that petroleum gas may be present;

- f) restricting the use of pagers and cell phone in areas designated by the Master of the ship, for example the accommodation area (pagers and cell phones must be turned off while outside, on, or near the tank deck); and
 - g) Restricting the use of battery-powered tools and contraband detection equipment to areas other than the tank deck unless such tools and equipment are intrinsically safe.
63. Smoking is prohibited on any ship while bunkering, except in those areas designated by the Master of the ship.
64. While in a refinery complex, officers will only smoke in designated areas that have been established as designated smoking areas by the refinery plant.
65. When hazardous materials are encountered, safety precautions will be taken in accordance with any visible instructions (i.e. labels, placards), CANUTEC guidelines and Material Safety Data sheets accessible through websites such as the Canadian Centre for Occupational Health and Safety website.

Confined Space Entry

Note: Due to the suspension of the Confined Space Entry program, there will be no confined space entry examinations.

66. Only officers who are trained and certified in Shipboard Confined Space Entry delivered by the MCE are permitted to conduct a confined space entry examination.
67. All inspections of confined spaces will be conducted in accordance with the Shipboard Confined Space Procedures and the Respiratory Protection Program.
68. Cargo holds are sometimes considered a confined space due to their configuration and their atmosphere, and should be approached accordingly when inspected. In any case prior to all cargo hold inspections:
- a) the Captain must be questioned as to present and previous cargo to determine if there are any risks inherent to the cargo or the hold itself;
 - b) the hold must be well ventilated and tested with a multi-gas detector by a person trained in its use to ensure the area poses no threats to life or health and safety.

- c) Adequate lighting must be available inside the cargo hold, either fixed or portable.

Hull Examinations/Remote Operated Vehicle (ROV)

- 69. ROVs, divers or dry-docking the ship are options to examine the ship hull area and retrieve contraband in or around it.
- 70. The use of ROVs, divers or having a ship dry-docked will be based on intelligence and indicators.
- 71. In cases where the ROV is utilized, refer to the *ROV Standard Operating Procedures*.
- 72. In cases where divers are needed, CBSA officers are to comply with the *Statement of Work – Diving Services* found in Appendix C.

ROLES AND RESPONSIBILITIES

Regional Operations

Border Services Officers

- 73. Marine BSOs will be responsible for:
 - a) Abiding by this policy and the procedures.
 - b) Completing the Vessel Rummage Course and, when applicable, the Shipboard Confined Space Entry Course prior to undertaking any of these functions.
 - c) Conducting examinations in accordance with the training given at the MCE, and in accordance with the commercial marine vessel examination policy and procedures.
 - d) Conducting examinations as per the roles and responsibilities assigned by the rummage coordinator.
 - e) Being vigilant in protecting their health and safety and that of the public.
 - f) Taking all necessary precautions against all identified hazards before, during and after a vessel examination.
 - g) Maintaining in safe and good working order personal tools, personal protection equipment and shared equipment used for examinations, including contraband detection equipment.

- h) Maintaining all equipment logs as directed by the manufacturer's instructions.
- i) Reporting any problems encountered before, during or after an examination to the rummage coordinator.
- j) Completing reports and inputting results of vessel rummages into the appropriate system.
- k) Reporting any problems encountered while performing their duties to the superintendent and /or manager.

Regional Management

74. The Regional Management for Marine Operations will be responsible for:

- a) Ensuring adherence to the policy and procedures on commercial marine vessel examination.
- b) Ensuring all marine officers receive the required training and equipment.
- c) Guiding and supporting CBSA officers in the performance of their duties.
- d) Promoting and monitoring procedures and health and safety requirements and correcting any breaches.
- e) Maintaining and storing permits according to vessel examinations and shipboard confined space procedures.

Operations Branch

Port of Entry Operations - Commercial Operations

75. Commercial Operations will be responsible for:

- a) Ensuring the Policy, Standard Operating Procedures and Enforcement Manual chapters relevant to marine commercial vessel examination are carried out in the field.

Programs Branch

Commercial Border Programs – Commercial Secondary Unit

76. Commercial Secondary Unit will be responsible for:

- a) Providing program guidance through structured national guidelines, national policies and national procedures.
- b) Developing, implementing, maintaining and monitoring policies and protocols for secondary commercial processing in all modes.

- c) Developing, implementing, maintaining and monitoring policies and protocols for search and seizures and detention of goods.
- d) Providing policy direction for course content.
- e) Identifying training needs.
- f) Monitoring adherence to this policy and procedures by the regions.
- g) Providing guidance and support to the MCE.

Detection Program and Policy Unit

77. The Detection Program and Policy Unit will be responsible for:

- a) Developing, implementing, maintaining and monitoring national policies, processes, regulations and legislation related to detection tools and technology.
- b) Providing functional direction to the field. Conducting research for tools and equipment that meet the CBSA's marine operation needs.
- c) Providing detailed information to the Program Authority and the MCE on detection technology tools that meet Occupational Health and Safety requirements and pertain to the marine mode.
- d) Providing guidance to the field pertaining to the tools and instruments used in contraband detection.
- e) Working in cooperation with the MCE to evaluate new technologies to establish their operational feasibility.
- f) Monitoring detection technology performance, effectiveness and use at a national scale.
- g) Designing policies on detection technology.

Human Resources Branch

Marine Center of Expertise

78. The Marine Center of Expertise will be responsible for:

- a) developing, designing and delivery all training related to vessel rummage;
- b) delivering training related to confined space entry;
- c) providing advice on training material related to vessel rummage and confined space entry upon request;
- d) researching and developing new practices for efficient, safe and effective examinations when requested;
- e) conducting testing of contraband detection equipment related to marine examination when requested;
- f) developing procedures for confined space and vessel rummages;
- g) providing on-site guidance and assistance to vessel rummage and confined space entry teams when requested and circumstances dictate;

- h) administering the Shipboard Confined Space Entry program and annually re-certifying confined space entry team members;
- i) exchanging information and techniques with other domestic and international marine training facilities; and
- j) assisting program areas in the development of methods, procedures, policies and tools in the support of marine training and examination activities

PROCEDURES

Arrival and Boarding

- 79. Park vehicles in a designated area where they will not interfere with cargo handling machinery and trains.
- 80. Ensure that the safety net is in place and secured before accessing the accommodation ladder, unless the accommodations ladder is fully enclosed.
- 81. When climbing the accommodation ladder hold on to the handrail with at least one hand.
- 82. Wear an approved personal flotation device and/or approved insulated protective clothing when boarding a vessel where drowning hazards are present such as:
 - a) a vessel at anchor;
 - b) a moored vessel; or
 - c) From a pilot boat or other vessel onto a vessel that is underway.
- 83. Climb the accommodation ladder or the Jacob's ladder only when it is safe to do so when boarding a vessel:
 - a) at anchor;
 - b) moored; or
 - c) From a pilot boat or other vessel onto a vessel that is underway.
- 84. Follow directions given by the aircraft's pilot when boarding from a helicopter to a vessel that is:
 - a) at anchor;

- b) moored; or
- c) Underway.

Rummage Coordinator

- 85. Carry out the pre-boarding briefing, inform the search team members of the reasons of the search (i.e. target, lookout, etc.), assign roles to team members and outline search expectations.
- 86. Inform the ship's Captain that CBSA has boarded his ship for the purpose of conducting a search.
- 87. Request, if applicable, ship's papers and documents such as safety certificates, ship's logs, ship's plans, and any other documents that may be relevant to the search. Make the request to the Captain.

Note: Refer to D3-5-1 Vessels in International Service for the detailed list of safety certificates.
- 88. Contact the Ships' Safety Branch of Transport Canada when certificates are expired, irregular, or if deficiencies are noted or suspected.
- 89. Advise the Captain of what is required from his crew members and if mustering of the crew will take place.
- 90. Coordinate with the Captain for access to all crew cabins and to have a ship's officer (or suitable alternative) present for cabin examinations.
- 91. Complete the Rummage Information and Safety Checklist (K-154).
- 92. Advise team members of the potential health and safety issues present as soon as the information has been obtained from the ship's captain.
- 93. Inform the examination team of emergency evacuation procedures and ship's alarms; Abandon Ship Alarm, Fire Alarm, and General Alarm.
- 94. If boarded at sea, determine if the vessel has motorized lifeboats, identify their location and determine if there are sufficient spaces for team members on the motorized lifeboats.
- 95. Inform the examination team of the presence/absence of asbestos containing materials (ACMs) on the vessel.

Note: If the presence of ACMs is confirmed or the captain is unable to confirm the presence of ACMs, proceed according to the Asbestos-related Rummage Procedures and Respiratory Protection Program.

96. Coordinate the roles and responsibilities of all examination team members to ensure all areas that require examination are covered.
97. Review vessel's customs documentation and proceed with the Captain's interview.
98. Compare the information provided by the Captain to the vessel's customs documentation and targeting information, and modify the focus and depth of the search as required.
99. Request the presence of crew members through the Captain when the examination of the crews' quarters is underway and if their presence is required.
100. Advise the Captain, when deemed necessary, upon discovery of prohibited, restricted, controlled, or regulated goods.
101. Immediately report any damage caused by an examination to the Captain, especially damage to life saving equipment. Officers will record any damage caused by an examination in their notebooks.
102. Contact the superintendent in cases of enforcement actions or unusual problems.
103. Complete the Vessel Examination Report and transmit it to the Targeting Unit for input into the Customs Enforcement Library.

Examination Team Members

Note: For detailed vessel examination procedures refer to the Vessel Rummage Course, Practical Exercise Manual, and the Shipboard Confined Space Procedures.

104. Complete the required Confined Space Entry Permit when required.
105. Use a systematic and thorough approach for all examinations no matter how large or small the area.

106. Consider the use of all tools whenever possible to facilitate the work, to avoid dismantling deck heads and to reduce the chances of breaking any components.

Note: The use of contraband detection equipment (e.g. inspection mirrors, flashlights, fiberscopes, probes, pole cameras, etc.) may assist in the examination of visually limited areas of a vessel.

107. Use vessel plans (i.e. General Arrangement, Ventilation Plan, Capacity Plan, etc.) when looking for void spaces and false bulkheads that could conceal contraband.
108. Address all requests for crew assistance or problems through the Rummage Coordinator who will take it up with the Captain.
109. Request, through the Rummage Coordinator, that the crew be mustered and confined to an area when it is determined that it is the most practical approach or there are serious health and safety concerns.
110. Inform the appropriate ship's officer when an intensive examination is to be conducted and request that they be present throughout the examination. Such examination would include the dismantling of machinery, and could affect the ship's operation.
111. Address questions to the ship's officer most familiar with the area being examined (i.e. Chief Officer regarding decks, Chief Engineer regarding the engine room).
112. When examining the Captain's cabin:
 - a) request the Captain open the safe;
 - b) have two officers present to avoid false accusations of robbery;
 - c) ask the Captain to remove and take possession of all currency and monetary instruments during the safe examination; and
 - d) Instruct the Captain to count the currency and monetary instruments to ensure it is all present prior to returning it to the safe and locking it.

Note: Cargo ships and cruise ships (including the crew, passengers and stores thereon) do not have to report currency or monetary instruments totalling or in excess of \$10,000 if they have a final destination outside of Canada and will not be spending or leaving any more than \$10,000 while in Canada.

113. If the Captain refuses to open the safe, advise the Rummage Coordinator who will decide whether or not to pursue the matter based on indicators and intelligence.

Note: Some shipping lines consider the Captains' safe foreign soil and advise the Captain that CBSA has no right to access it. However, the Captain's safe is not considered foreign soil to CBSA and if the Rummage Coordinator decides to pursue this matter due to indicators, officers may access it.

114. When examining crew quarters, interview the officer or crew member that resides in a cabin while another officer examines the accommodation.
115. As part of the examination, consider the inspection of all specialized access areas referred to in the Practical Exercise Handbook developed by the MCE (i.e., fire extinguishers, vertical manhole covers, etc.).
116. When the ventilation system is examined, wear safety glasses (to protect against flying particles of dust, rust, etc.) and a half-mask respirator equipped with P100 filters to protect against breathing airborne particles.
117. Never introduce body parts into a ventilation system before it has been shut down and isolated, and it is safe to do so.
118. When possible, walk the deck on the opposite side of the loading or unloading machinery when it is in operation.
119. Searching areas where overhead loading/unloading activities places the officers at risk and must be avoided.
120. In order to mitigate the chance of electrical shock, officers must ensure that they are not wearing any metal object, including the CBSA badge, during engine room examinations.
121. Be sure to carefully examine life rafts, and safety and fire-fighting equipment.

Note: Life saving equipment must be treated with care.

122. Immediately report any damage caused by an examination, in particular any damage to life saving equipment, to the Rummage Coordinator who will advise the Captain.

Note: Damage to this type of equipment can delay the departure of the vessel due to shipping regulations.

123. Immediately advise the Rummage Coordinator upon discovery of prohibited, restricted, controlled, or regulated goods.

124. Provide a list of areas searched to the Rummage Coordinator when the examination is complete. Officers will take personal notes throughout the rummage.

Note: See Appendix A for a copy of the Rummage Information and Safety Checklist (K154).

Personal Search

Note: For clarification on this section, refer to Enforcement Manual Part Six, Chapter Six, Personal Search Policy and Procedures.

125. When conducting a personal search onboard a vessel, officers must follow all policy and procedures set out in EN Manual Part 6, Chapter 6.
126. Use a vacant spare cabin/room for conducting the personal search.
127. Make the cabin/room as safe and secure as possible prior to escorting the person in for the search.
128. Advise the Rummage Coordinator if no vacant spare cabin/room is available and ask that they ask the Captain to designate a room for this purpose.
129. Ensure the cabin/room designated by the Captain is as safe and secure as possible prior to escorting the person in for the search.

Hull Examinations

130. Using ROVs, or divers, or dry-docking the ship are options to examine the ship hull area and retrieve contraband in or around it.
131. The use of ROVs or divers or dry-docking the ship will be based on intelligence and indicators.
132. The use of the ROV on the hull of a tanker may require a hot-work or electrical work permit issued by the refinery.
133. In cases where the ROV is utilized, refer to the ROV Standard Operating Procedures.
134. ROV operations require a minimum of two (2) trained officers or operators, one as the pilot of the ROV and one as the tender/safety officer.

135. All ROV operators (pilot and tender) must complete the CBSA ROV Operator course.
136. ROV use will be risk driven when intelligence or prior information concerning parasitic attachments is available.
137. The ROV will allow below-waterline access to the hull without the use of divers.
138. All ROV pilots and tenders are required to wear a life jacket/vest when operating dockside or from a vessel.
139. The assisting officer(s) will maintain security and control of the area during the search.
140. The ROV pilot determines the starting point for each search.
141. ROV dives should be aborted as soon as damage is discovered on the unit. Following an inspection, report all damages and repairs to the Detection Programs Unit (DPU) National Help Desk (1-866-389-1122).
142. In the event the ROV gets entangled or stuck beneath the vessel, refer to the contingency plans outlined in the ROV Standard Operating Procedures.
143. The ROV may be operated from alternative platforms, i.e.: a boat with the capabilities to launch the ROV, and/or the vessel itself. In these cases, refer to the Special Operating Conditions outlined in the Standard Operating Procedures (SOP) and relevant Marine Occupational Safety and Health (MOSH) regulations.
144. In cases where divers are needed, CBSA officers are to comply with the *Statement of Work – Diving Services* found in Appendix C and should refer to local procedures.

REFERENCES

Customs Act
Criminal Code
Canada Shipping Act
Canada Labour Code, Part II
Vessel Rummage Course
Shipboard Confined Space Procedures
Remote Operating Vehicle Standard Operating Procedures

Statement of Work – Diving Services
Canada Occupational Health and Safety Regulation - Confined Spaces
Directives
Canada Occupational Health and Safety Regulations
CBSA Respiratory Protection Program
National Joint Council Occupational Health and Safety Directive
Canada Occupational Health and Safety regulations – Protection against
drowning
Directive D3-5-1 Vessels in International Service

Part 4

EXAMINATIONS – GOODS AND CONVEYANCES

Chapter 8

COMMERCIAL MARINE VESSEL EXAMINATION

APPENDIX A

Rummage Information and Safety Checklist (K154)

EN Part 4 Chapter 8

Commercial Marine Vessel Examination

APPENDIX A

 Canada Border Services Agency Agence des services Frontalières du Canada

Rummage Information & Safety Checklist
(R.I.S.C.)

APRIL 2007

COMPLETED BY	
NAME	▶
SIGNATURE	▶
TEAM	▶
DATE	▶

K104 (07)

BSP500

HUMAN HEALTH PROBLEMS (e.g. Chetani, Typhoid)	YES <input type="checkbox"/> NO <input type="checkbox"/>
STOWAWAYS	YES <input type="checkbox"/> NO <input type="checkbox"/>
ANIMALS ON BOARD	YES <input type="checkbox"/> NO <input type="checkbox"/>
REPAIRS DURING VOYAGE (e.g. welding)	YES <input type="checkbox"/> NO <input type="checkbox"/>
REPAIRS TO BE CARRIED OUT IN PORT	YES <input type="checkbox"/> NO <input type="checkbox"/>

If Yes to ANY of the above, please give details:

TYPE OF CARGO:	
FULL DISCHARGE	PART DISCHARGE
LOADING	PART LOADING
DETAILS FOR PART DISCHARGE/LOADING (e.g. Parts, Fuel No. etc.):	
STORAGE PLAN OBTAINED	YES <input type="checkbox"/> NO <input type="checkbox"/>
ANY HAZARDOUS OR DANGEROUS CARGO	YES <input type="checkbox"/> NO <input type="checkbox"/>
ANY ASBESTOS CONTAINING MATERIAL (ACM)	YES <input type="checkbox"/> NO <input type="checkbox"/>
DETAILS (e.g. Location, Risk, etc.):	

3. HEALTH & SAFETY

EQUIPMENT TO BE USED: Tick ☐ when checked and in good working order

Breathing Apparatus	<input type="checkbox"/>	Multi-gas Monitors	<input type="checkbox"/>
Safety Harnesses and Lashes	<input type="checkbox"/>	Rechargeable Lantern	<input type="checkbox"/>
Radio/Sensor	<input type="checkbox"/>	Intrinsically Safe Flashlights	<input type="checkbox"/>
First Aid Kit(s)	<input type="checkbox"/>	Foot Protection	<input type="checkbox"/>
Eye Protection	<input type="checkbox"/>	Ear Protection	<input type="checkbox"/>
Head Protection	<input type="checkbox"/>	High Visibility Jacket/Vest	<input type="checkbox"/>
Respirators (each)	<input type="checkbox"/>	Safety Goggles	<input type="checkbox"/>
Other (specify):	<input type="checkbox"/>	Radio(s)	<input type="checkbox"/>

VESSEL	DATE	TIME
R.I.S.C. (RUMMAGE INFORMATION & SAFETY CHECK LIST)		
Parts 1, 2 and 3 to be completed by search co-ordinator. Part 4 to be completed during the rummage.		
1. PERSONNEL		
SEARCH CO-ORDINATOR		
TEAM LEADERS		
ALL TEAM MEMBERS NAMES & CALL SIGNS		
Continue under Section 3 if necessary.		
TIME BOARDED		TIME DISMANTLED
Names of certified First Aiders:		
Emergency & Safety Plan: Is it available on board the vessel? Plan of action agreed by team members in event of emergency. YES <input type="checkbox"/> NO <input type="checkbox"/>		
Communications established: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> (agreed frequency)		
2. VESSEL DETAILS		
DEPARTURE		LEADER OF STAY
LAST PORT		NEXT PORT
CREW LIST OBTAINED:		YES <input type="checkbox"/> NO <input type="checkbox"/>
IF NO, NUMBER OF CREW		Tabularly:
CHECKS (FIR, CIRC, NAVIS, etc.):		YES <input type="checkbox"/> NO <input type="checkbox"/>
AGENT		
GENERAL ALARMS		FIRE ALARMS
FIXED FIRE FIGHTING SYSTEM		ALARMS ALARM <input type="checkbox"/> MANUAL <input type="checkbox"/>
BIR - CO2 <input type="checkbox"/> HALON <input type="checkbox"/>		VISUAL <input type="checkbox"/> AUTOMATIC <input type="checkbox"/>

COPY OF OR PLAN OBTAINED	YES <input type="checkbox"/> NO <input type="checkbox"/>
COPY OF CAPACITY PLAN OBTAINED	YES <input type="checkbox"/> NO <input type="checkbox"/>
ANY HEALTH AND SAFETY RISKS THAT HAVE BEEN BROUGHT TO YOUR ATTENTION, NOTIFIED TO ALL TEAM MEMBERS	YES <input type="checkbox"/> NO <input type="checkbox"/>
ALL CUSTOMS PERSONNEL ON BOARD WORKING TO AN AGREED WORKING PATTERN	YES <input type="checkbox"/> NO <input type="checkbox"/>
OFFICIAL VEHICLE ACCESSIBLE FOR EMERGENCIES AND PARKED IN AN APPROVED PLACE	YES <input type="checkbox"/> NO <input type="checkbox"/>
ALL CUSTOMS PERSONNEL ON BOARD ARE AWARE OF THE ALARM MUSTER AND EVACUATION PROCEDURES FOR THE VESSEL	YES <input type="checkbox"/> NO <input type="checkbox"/>

OTHER SAFETY MATTERS OR COMMENTS

NAME	BADGE
SIGNATURE	
DATE	

8 of 15

4. A HEALTH & SAFETY ASSESSMENT OF EACH AREA SHOULD BE COMPLETED PRIOR TO RUMMAGE

(A) **APT DECK** - ✓ when rummaged, D when detector dog used, C when not used
 (Note: only 1-121 has been completed that already exists for when detector dog is used)

1. GENERAL RUMMAGE	4. DECK STORES
2. HOPES	(A)
3. WINCHES	(B)
4. VENTS	(C)
5. STEERING GEAR	(D)

(B) **MAIN DECK** - ✓ when rummaged, D when detector dog used, C when not used
 (Note: only 1-121 has been completed that already exists for when detector dog is used)

1. GENERAL RUMMAGE	10. WASTE
2. FOREPEAK	11. HOUSEHOLD STORES
3. FOREPEAK GENERAL	(A)
4. FOREPEAK STORES	(B)
(A)	(C)
(B)	(D)
(C)	12. HATCH COAMINGS
(D)	13. CO2 ROOM
5. CLOAK LOCKER	14. PLANT ROOM
6. PAINT STORE	15. HANGERS
7. BOW THRUSTER SPACE	16. PIPE TUNNELS
8. VENTS	

(C) **SUPERSTRUCTURE** - ✓ when rummaged, D when detector dog used, C when not used
 (Note: only 1-121 has been completed that already exists for when detector dog is used)

1. GENERAL RUMMAGE	6. SLOPPERS
2. AIR CONDITIONING ROOM	7. FUNNEL
3. BATTERY ROOM	8. NAMEBOARDS
4. STORES (A)	9. KITCHEN ISLAND
(B)	10. LIFEBOATS
(C)	

ROV EXAM? YES ☐ NO ☐ If yes, what areas were examined?

1. SEA CHEST PDS (Submersible)	4. STEER
2. RUDDER KEEPER	5. RUDDER
3. BOW THRUSTER PDS	

Is international waste being discharged? Yes ☐ No ☐

Is there any vessel rummage? Yes ☐ No ☐

(D) **CABINS** - All levels (as marked on attached crew list)

ENGINE ROOM

(A) **FUNNEL** - ✓ when rummaged, D when detector dog used, C when not used
 (Note: only 1-121 has been completed that already exists for when detector dog is used)

1. GENERAL RUMMAGE	2. HEADER TANKS
2. MIST BOX	4. VENTILATION PLUMBING

(B) **FUNNEL TO LOWER LEVEL** - ✓ when rummaged, D when detector dog used, C when not used
 (Note: only 1-121 has been completed that already exists for when detector dog is used)

1. GENERAL RUMMAGE	10. PROPELLER VESSELS
2. WORKSHOP	(A)
3. CONTROL ROOM	(B)
4. ELECTRICIAN WORKSHOP	(C)
5. STORES	11. VENTS
(A)	12. GENERATOR
(B)	13. FRESH WATER SYSTEM
(C)	14. SERVICE PLANT
(D)	15. OTHER
6. TANK ROOM	
7. SCRAMBLES SPACE	(A)
8. PUMP ROOM	(B)
9. PUMPS	(C)

(C) **LOWER LEVEL** - ✓ when rummaged, D when detector dog used, C when not used
 (Note: only 1-121 has been completed that already exists for when detector dog is used)

1. GENERAL RUMMAGE ABOVE	
2. GENERAL RUMMAGE BELOW	
3. BLUE FILTERS	
4. TUNNEL SCOPE	
5. OILY WATER SEPARATOR	
6. WASTE WATER TREATMENT	

CONFIDENTIAL SPACE YES ☐ NO ☐

ENTRY PERMIT COMPLETED AND ATTACHED

If no answer

ACCOMMODATION

(D) **UPPER DECK** - ✓ when rummaged, D when detector dog used, C when not used
 (Note: only 1-121 has been completed that already exists for when detector dog is used)

1. WHEELHOUSE	7. ALLEYWAY
2. MASTERS CABIN	8. DECKHEADS
3. RADIO ROOM	9. CANTY
4. RADIO OFFICE	10. BOND
5. PILOTS CABIN	11. STORES (A)
6. OWNERS CABIN	(B)
	(C)

(E) **MAIN DECKS** - ✓ when rummaged, D when detector dog used, C when not used
 (Note: only 1-121 has been completed that already exists for when detector dog is used)

1. CHIEF ENGINEER	11. CARD CONTROL ROOM
2. CHIEF OFFICER	12. STORES
3. SHIPS OFFICE	(A)
4. SPARE CABINS	(B)
(A)	(C)
(B)	(D)
(C)	13. SALON
(D)	14. LOCKER
5. HOSPITAL	15. LUNARBY
6. AIR CHANGING ROOM	16. DRINKS ROOM
7. OFFICERS MESS	17. BATH
8. TOILET/SHOWER	18. ELEVATOR
9. ALLEYWAY DECKHEADS	19. DUNGEON
10. AIR CONDITIONING ROOM	20. SPORTS ROOM
	21. OFFICERS BAR

(F) **LOWER DECK** - ✓ when rummaged, D when detector dog used, C when not used
 (Note: only 1-121 has been completed that already exists for when detector dog is used)

1. CREWMEN'S	6. COLO STORES
2. CREW BAR	7. TALLY OFFICE
3. GALLERY	8. CREW CHANGING ROOM
4. DRY PROVISIONS	9. TOILETS
5. SPARE CABINS	10. LOCKERS
(A)	(A)
(B)	(B)
(C)	(C)
(D)	(D)

(K) **STEERING GEAR** - ✓ when rummaged, D when detector dog used, C when not used
 (Note: only 1-121 has been completed that already exists for when detector dog is used)

1. RUDDER TRUNKING	3. FRESH WATER PORT
2. AFTER PEAK TANK	4. STEERING GEAR

(L) **FOREPEAK** - ✓ when rummaged, D when detector dog used, C when not used
 (Note: only 1-121 has been completed that already exists for when detector dog is used)

1. FOREPEAK TANK	2. FOREPEAK LOCKER
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(M) **ENGINE ROOM** - ✓ when rummaged, D when detector dog used, C when not used
 (Note: only 1-121 has been completed that already exists for when detector dog is used)

1. SETTLING TANKS	A	3. STORAGE TANKS	A
B		B	
C		C	
D		D	
2. SERVICE TANKS	A	4. DRAIN TANKS	A
B		B	
C		C	
D		D	
		5. COFFERDAM	A
		B	

(N) **OTHER** - ✓ when rummaged, D when detector dog used, C when not used
 (Note: only 1-121 has been completed that already exists for when detector dog is used)

HOLD	NO. 3
NO. 1	NO. 4
NO. 2	NO. 5

(O) **INTERIOR FRESH WATER SYSTEM** - ✓ when rummaged, D when detector dog used, C when not used
 (Note: only 1-121 has been completed that already exists for when detector dog is used)

A	C
B	D

DUCT KEEL SWIMMING POOL COFFERDAM

OTHER (PLEASE SPECIFY) - ✓ when rummaged, D when detector dog used, C when not used
 (Note: only 1-121 has been completed that already exists for when detector dog is used)

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 8

COMMERCIAL MARINE VESSEL EXAMINATION

APPENDIX B

*Canada Labour Code Part II, Canada Occupational Health and Safety
Regulations, Part XII, Safety Materials, Equipment, Devices and Clothing*

Canada Labour Code Part II, Canada Occupational Health and Safety Regulations

12.1 - PART XII SAFETY MATERIALS, EQUIPMENT, DEVICES AND CLOTHING <http://laws-lois.justice.gc.ca/eng/regulations/SOR-86-304/page-62.html#h-160>

12.11 (1) Where, in a work place, there is a hazard of drowning, the employer shall provide every person granted access to the work place with

(a) a life jacket or buoyancy device that meets the standards set out in the Canadian General Standards Board Standard

(i) CAN2-65.7-M80, *Life Jackets, Inherently Buoyant Type*, dated April, 1980, or

(ii) 65-GP-11, *Standard for: Personal Flotation Devices*, dated October, 1972; or

(b) a safety net or a fall-protection system.

(2) Where, in a work place, there is a hazard of drowning,

(a) emergency equipment shall be provided and held in readiness;

(b) a person who is qualified to operate all the emergency equipment provided shall be available;

(c) if appropriate, a powered boat shall be provided and held in readiness; and

(d) written emergency procedures shall be prepared by the employer containing

(i) a full description of the procedures to be followed and the responsibilities of all persons granted access to the work place, and

(ii) the location of any emergency equipment.

(3) Where a work place is a wharf, dock, pier, quay or other similar structure, a ladder that extends at least two rungs below water level shall be affixed to the face of the structure every 60 m along its length.

SOR/88-632, s. 51(F).

Loose Clothing

12.12 Loose clothing, long hair, dangling accessories, jewellery or other similar items that are likely to be hazardous to the health or safety of an employee in a work place shall not be worn unless they are so tied, covered or otherwise secured as to prevent the hazard.

SOR/2002-208, s. 27.

Protection Against Moving Vehicles

12.13 Where an employee is regularly exposed to contact with moving vehicles during his work, he shall

- (a) wear a high-visibility vest or other similar clothing, or
- (b) be protected by a barricade

that is readily visible under all conditions of use.

SOR/88-632, s. 52(F).
Records

12.14 (1) A record of all protection equipment provided by the employer shall be kept by him in the work place in which the equipment is located for a period of two years after it ceases to be used.

(2) The record referred to in subsection (1) shall contain

- (a) a description of the equipment and the date of its acquisition by the employer;
- (b) the date and result of each inspection and test of the equipment;
- (c) the date and nature of any maintenance work performed on the equipment since its acquisition by the employer; and
- (d) the name of the person who performed the inspection, test or maintenance of the equipment.

SOR/88-632, s. 53(F).

Instructions and Training

12.15 (1) Every person granted access to the work place who uses protection equipment shall be instructed by the employer in the use of the equipment.

(2) Every employee who uses protection equipment shall be instructed and trained in the use, operation and maintenance of the equipment.

(3) Every person granted access to a work place shall be instructed in respect of the written emergency procedures referred to in paragraph 12.11(2)(d).

(4) The instructions referred to in subsections (2) and (3) shall be

- (a) set out in writing; and
- (b) kept by the employer readily available for examination by every person granted access to the work place.

Part 4

EXAMINATION – GOODS AND CONVEYANCES

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COMMERCIAL MARINE VESSEL EXAMINATION

APPENDIX C

Statement of Work – Diving Services

STATEMENT OF WORK - DIVING SERVICES

REQUIREMENT

To provide experienced DIVERS, materials and equipment to carry out diving services including but not limited to underwater hull inspections, assistance with R.O.V. operations, providing videos, photographs and reports for the Canada Border Services Agency for various vessels involved in the international movement of goods and people located in { *insert local here* } on an “urgent” and “as and when requested” basis.

CONDITIONS:

- A. Services shall be carried out as detailed in CSA Standard Z275.4-02 - Competency Standard for Diving Operations; and the Canadian Standards Association Z275.2.92 (in particular Articles 3.5.3, 6.1.1, 6.4.1, 6.4.2 and 6.4.3.).
- B. Whenever possible, reasonable notice will be given, but should emergencies occur, one (1) hour response will be required, where a routine requirement exists three (3) hour response time will be required.
- C. Videos, photographs, and reports are to be provided upon request.

CERTIFICATION:

We certify that we have the systems identified in the Statement of Contractor Requirements (SOCR) as stated herein or equal in place.

Contractor's Representative

Date

STATEMENT OF CONTRACTOR REQUIREMENTS (SOCR)

- 1. Quality/Safety System Initiatives
 - 1.1 Contractors shall confirm in writing that they will comply with legislative requirements and industry standards within their area of jurisdiction related to health and safety.

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- 1.2 Contractors shall confirm that they will follow all applicable policies and procedures of the site owner where applicable and operationally feasible. This is an essential demonstration of "due care and diligence."
- 1.3 Contractors shall confirm that they are aware of and accept the appropriate health and safety jurisdiction, and that the contractor, and all sub-contractors will comply with the specified provincial and federal regulatory instruments, as appropriate.
- 1.4 Contractors shall not enter into subcontracts without prior permission.
- 1.5 Contractors shall confirm that they will oblige to furnish evidence of compliance with all applicable workers' compensation legislation. Contractors (and their sub-contractors) shall provide proof of Workers' Compensation Boards (WCB) coverage for all their personnel.
- 1.6 Contractors shall confirm to the obligation of indemnifying the employer or prime contractor for any losses, including fines or legal expenses, arising from health and safety liability.
- 1.7 CBSA, shall confirm the right to the Contractor to stop work or ultimately terminate the contract without penalty if, in the opinion of CBSA, the work is not being performed safely by the Contractor or the work is being performed in a manner that is contrary to the requirements of the applicable safety legislation.
- 1.8 Contractors shall confirm that they have an established and current safety program in force for all employees under contract.
- 1.9 Contractor shall confirm that they will provide all appropriate equipment, devises, tools and machinery, including proper Personal Protective Equipment (PPE) for their personnel; will ensure that provided material is maintained in proper working condition; and, is used in the prescribed manner [Canada Labour Code (CLC) 125(w) refers] when required.
- 1.10 Contractors shall confirm that they will attend safety and coordination meetings for the purpose of informing their personnel of health and safety hazards at the work site, where and as requested.
- 1.11 The following safety documents are to be adhered to while carrying out diving services for the Canada Border Services Agency:

Occupational Safety and Health Part II, Canada Labour Code
Occupational Safety and Health Policy Volume of the Treasury Board Manual
CSA Standard Z275.4-02 - Competency Standard for Diving Operations;
CSA Standard Z275.2.92 – Occupational Safety Code for Diving Operations

1.12 The Contractor shall carry Ship Repairer's Liability Insurance of no less than \$2,000,000.00.

PRICING: Estimated number of hours shall be used for evaluation purposes only. Prices quoted shall remain firm for the period of April 1, 20xx up to and including March 31, 20xx.

Hourly Rates are as follows: (cost of equipment will be included in hourly rates)

1. Up to 130 ft. \$_____/hour/diver

2. Vessel Rates:

Boat, radar equipped, CSI Approved work boat:

Small Vessel 45' \$_____/hour

3. Sub-contracts will be charged at cost including mark-up of 10%.

4. Work performed outside (*insert local here*) \$_____/hour/diver

5. Rate for one diver or an additional diver \$_____/hour/diver

6. If Diving Services are required to be performed in various (*insert province here*) locations outside (*insert local here*) the following shall apply:

Meal Allowance \$_____/day/diver

Car Mileage \$_____/km

Reasonable and proper accommodation (when required)

At cost (Supported by receipts).

CBSA ENFORCEMENT MANUAL

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 9

MARINE PLEASURE CRAFT EXAMINATION POLICY AND PROCEDURES

15/05/17

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to conduct examinations of marine pleasure craft in accordance with the provisions set out in the Customs Act and in recognition of the requirement for safety aboard and around marine pleasure craft.

DEFINITIONS

2. Refer to Part 11 - Glossary.

AUTHORITIES

Customs Act

3. Section 11.2 allows the designation of areas as customs controlled areas.
4. Section 11.3 allows owners or operators of customs controlled areas to grant access to authorized or prescribed persons only.
5. Section 13 stipulates that every person reporting goods under section 12 of the Customs Act is obligated to answer truthfully questions asked with respect to the goods and present the goods, remove any covering, unload any conveyance and open or unpack any package or container that an officer wishes to examine.
6. Section 99 (1)(a) authorizes officers to examine goods and any containers or conveyance that may contain goods upon importation up to the time of release.
7. Section 99 (1)(c) authorizes officers to examine any goods that have been reported under Section 95, at any time up to the time of exportation.

Note: These provisions include the authority to examine in-transit marine pleasure craft that have docked in Canada and the baggage of their passengers, regardless of the reason for docking.

8. Section 99 (1)(f) authorizes the stopping and boarding of any conveyance, and the examination of any goods and conveyance that an officer suspects on reasonable grounds contains goods that are in contravention of the Act.

Note: This reference pertains to situations where a conveyance has been released and an officer wishes to examine it or where a conveyance is being exported and no goods have been reported under section 95.

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9. Section 99.1 allows officers, who on reasonable grounds suspect that a person has entered Canada without presenting himself or herself in accordance with subsection 11 (1), to stop that person to question the person and examine any goods imported by that person within a reasonable time after the person has entered Canada.

Canada Shipping Act

10. The Canada Shipping Act requires certain watercraft to be registered or carry an issued license number.
11. Section 63.1 stipulates that it is an offence to operate a registered vessel without registration aboard.
12. Sections 100 and 101 require certain pleasure craft to be licenced and that their owners maintain a copy of that license on board the vessel.

PURPOSE AND SCOPE

13. The purpose of this policy is to provide guidelines to CBSA personnel for conducting marine pleasure craft examinations.
14. It is also the purpose of the policy to emphasize the importance of health and safety when boarding and examining marine pleasure craft.
15. This policy applies to all CBSA personnel.

BACKGROUND

16. In 1996, the Marine Centre of Expertise (MCE) was established to train CBSA personnel working in the marine environment as well as to contribute to the development and approval of examination practices. The core curriculum delivered at the MCE includes marine in-service, vessel rummage, Remote Operated Vehicle (ROV) as well as container and pleasure craft examinations. In doing so, the MCE plays a central role in helping the CBSA meet its strategic objective to keep Canada's population safe and secure. All programs must meet the Canada Labour Code Part II, Canada Occupational Health and Safety Regulations and the National Joint Council Occupational Health and Safety Directive, and meet the CBSA's obligation to provide a safe working environment for its employees at all times.
17. With MCE training, officers have the expertise to conduct thorough vessel examinations in a professional and safe manner. They are also in the best

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position to identify and interdict illicit contraband that may be hidden onboard marine pleasure craft.

POLICY GUIDELINES

General

18. As per the National Training Standards, only officers who have successfully completed the CBSA Small Vessel Examination Course (S9018-N) will conduct examinations of pleasure craft.

19.

20. Officers should familiarize themselves with indicators, concealment methods and other related information by reading intelligence bulletins, alerts and other relevant publications available.

21. Any problems encountered in following this policy or in the performance of an examination are to be reported immediately to the responsible CBSA superintendent or manager.

Health and Safety

22. Health and safety information may be gathered by the attending officers or the Telephone Reporting Centre (TRC) in advance of the actual boarding. Such information should be used or kept in mind as part of the boarding of the vessel, the examination and the dealings with the travellers.

Note: This will enhance the effectiveness, as well as the focus and depth of the examination.

23. CBSA personnel are to continually perform a risk assessment of the work area at all times while onboard or around a vessel and take appropriate actions to protect themselves/fellow officers against any present and/or potential hazards, including using/wearing personal protective equipment (PPE). Officers will report any identified health and safety issues immediately to a superintendent

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24. As an accidental fall into the water presents a risk of hypothermia and drowning, at all times while working on or near the water, the side of a dock/wharf or on the deck of the vessel, officers will wear their personal flotation device (PFD) that has been provided by the CBSA in addition to all PPE and CBSA-approved protective footwear.

Note: Refer to the National Joint Council, [Part XIII](#)-Personal and Protective Equipment and Clothing Directive and the *Canada Occupational Safety and Health Regulations*, [Part XII](#) - Safety Material, Equipment, Devices and Clothing Directive for the requirements that must be met where these standards are applicable. Additional details are also available in Part 4, Chapter 8, Commercial Marine Vessel Examination Policy and Procedures, Appendix B.

25. Life vests and buoyancy devices (also known as PFDs) must be non-cumbersome and meet the requirements of the *Canadian General Standards Boards for Personal Flotation Devices*. Devices must meet the following Canadian General Standards Boards standard. Approved equipment includes: Mustang Survival MD3157, MD3154, MD3188; North Water Standard PFD, and the updated models of these PFDs.
26. After assessing the risks in an area, officers will take appropriate action to protect themselves against hazards.
27. Officers are permitted to tactically reposition _____ from any situation, if in their judgement there is an undue risk to their safety, that of another officer and/or a member of the general public.

Note: Refer to section 128(1) of the [Canada Labour Code](#).

28. When working in a noisy environment, officers will wear CSA-approved hearing protection.
29. Officers will identify and report health and safety issues to the superintendent and their co-workers.
30. In accordance with local/provincial legislation, officers may smoke only in areas designated by the owner/operator/captain. This does not include areas outside the owner/operator/captain's designation where crew or passengers may choose to smoke.
31. When encountering hazardous materials onboard a marine pleasure craft, safety precautions will be taken in accordance with any visible instructions (i.e. labels, placards), Canadian Transport Emergency Centre (CANUTEC) guidelines and Material Safety Data Sheets; accessible through the [Canadian Centre for Occupational Health and Safety website](#).

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32. Prior to any enclosed space inspections, the area must be well ventilated and evaluated to ensure it is safe to examine. Officers will not enter areas suspected of being confined spaces. For further information on confined spaces and relevant policy, refer to *National Joint Council, Occupational Health and Safety Directive, Part XII – Confined Spaces*.

Pleasure Craft Examination

PROCEDURES

Note: Refer to the Small Vessel Examination Course (S9018-N) material from the MCE for detailed procedural guidelines.

Arrival and Boarding

33. Park vehicles in an area where they will not interfere with traffic and where it is safe to do so.
34. While approaching the vessel, be aware of your surroundings as well as any indicators that may be present.
- 35.
36. Before any examination, ensure that the following steps are followed:
- a) wear proper clothing and footwear;
 - b) ensure proper tools are available to conduct intensive examinations;
 - c) ensure communications equipment is functional and adequate;
 - d) contact the office to inform of arrival on scene and time of boarding vessel;
 - e) keep the office informed of progress of examination and have scheduled check-in calls for high-risk situations (i.e. every 20 minutes); and
 - f) complete a risk assessment and look for items of potential risk that may include but are not limited to:
 - i. fuel in the vessel's bilge;

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- ii. leaking fuel tanks;
 - iii. excessively smoking engines;
 - iv. hidden persons;
 - v. weapons;
 - vi. slippery, broken, steep or missing ladders;
 - vii. debris and garbage about the decks;
 - viii. missing planks or holes in the deck;
 - ix. slippery decks;
 - x. presence of butane and propane gas leaks;
 - xi. presence of pyrotechnics;
 - xii. low overhead;
 - xiii. open hatches or scuttles;
 - xiv. poor lighting or
 - xv. exposed wiring.
- g) ensure that it is safe to board the vessel at this time.
- 37. When boarding a small marine pleasure craft from a small boat, step as near amidships as possible. Avoid stepping on the gunnels (edge or railing) to improve safety and prevent falls. Pay attention to the lively motion of the vessels. Ensure suitable footing and handholds prior to proceeding on to the vessel.
- 38. When boarding a larger marine pleasure craft, if possible, use the step on the transom or the aft gunnels to make boarding fairly easy and safe.
- 39. Whenever boarding a marine pleasure craft, keep your hands free. Load your personal gear on the boat's deck then board.
- 40. Always keep in mind that walking surfaces aboard may be covered with dew, spray or rain and might be slippery and/or icy.
- 41. Upon boarding a pleasure craft and when practical, officers should meet with the person in charge to request documentation and perform a document review before proceeding with an interview. Advise the owner/operator/captain what is required from them and all travellers.
- 42. Provide the opportunity for all persons to fulfill reporting obligations (i.e. ensure all passengers are thoroughly questioned).
- 43. Arrange with the owner/operator/captain for access to all areas. For safety reasons, notify the vessel's operator and ensure machinery or electrical components are turned off and locked out, prior to examining a piece of machinery or electrical component, particularly in the engine room/compartments.

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Marine Pleasure Craft Examination

44. Advise your superintendent and co-workers of the potential health and safety issues present.
45. Inform your superintendent and co-workers of the presence of asbestos on the vessel.

Note: If the presence of asbestos is confirmed or unknown (suspected), proceed according to the [Respiratory Protection Program](#).

46. Review documentation and proceed with the captain's interview.
47. Compare the information provided by the owner/operator/captain to the ship's documentation and targeting information.
48. If applicable, request that the crew be mustered and confined to an area when it is determined that it is the most practical approach or there are serious health and safety concerns.
49. Always perform a thorough and consistent examination, building the intensity of the examination based on indicators that have been observed and can be articulated.
50. Examinations of pleasure craft will be completed in a professional and consistent manner. Privacy of individuals on board should be respected during the examination as much as practicable. Refer to Appendix A PLEASURE CRAFT 7-14 POINT EXAMINATION STANDARDS FOR POWER AND SAIL PLEASURE CRAFT for suggested systematic approach.
51. Examination of a marine pleasure craft

must be undertaken in accordance with the minimum standards outlined in Appendix A - PLEASURE CRAFT 7-14 POINT EXAMINATION STANDARDS FOR POWER AND SAIL PLEASURE CRAFT.
52. Immediately report any damage caused by an examination to the owner/operator/captain.
53. Inform the owner/operator/captain when an intensive examination is about to be conducted and when it is safe to do so, request that he/she be present throughout the examination.
54. Address questions to the owner/operator/captain on all areas being examined.
55. Use all tools available whenever possible to avoid dismantling parts and to reduce the chances of breaking any components.

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Note: An intensive examination involves the dismantling of parts, which could affect the vessel's safety and operation. Officer safety is of the utmost importance when conducting detailed examination, and as such, officers should limit the depth of their examination to which they are trained to carry out.

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60. If any confined spaces are encountered onboard a marine pleasure craft, act according to the Shipboard Confined Space Procedures.

Note: Refer to [Part 4, Chapter 8](#), Commercial Marine Vessel Examinations Policy and Procedures for information regarding examinations of confined spaces.

61. Officers may arrest crew or passengers for obstructing or hindering with an examination and remove them from the area.

Note: Refer to [Part 6, Chapter 1](#), Arrest and Detention and [Part 9, Chapter 2](#), Prosecution Procedures.

62. If the examination results in a seizure or enforcement action, ensure that current CBSA policy is adhered to.

Note: Refer to [Part 5, Chapter 2](#), Traveller Seizures and Ascertained Forfeitures for additional information.

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Marine Pleasure Craft Examination

63. Immediately advise the superintendent upon discovering prohibited, restricted, controlled or regulated goods.
64. Should the examination result in a seizure or enforcement action that falls within the threshold for referral for prosecution, the BSO or Superintendent will ensure that Investigations is advised and that all pertinent details are included in the referral.

Note: Refer to [Part 9, Chapter 1](#), Investigations Referrals Policy and Procedures.

65. Advise the owner/operator/captain upon discovery of prohibited, restricted, controlled, or regulated goods when deemed necessary.
66. Report any problems encountered in following this policy and procedures or in the performance of an examination to the responsible CBSA superintendent or manager.
67. Ensure that all applicable reports/systems are completed when the examination is a result of a target or lookout referral. Officers should also relay any pertinent information to Enforcement and Intelligence through the use of the Occurrence Reporting System.

Note: For non-automated ports, the examination report must be completed manually.

Personal Search

Note: Refer to [Part 6, Chapter 6](#), Personal Search Policy and Procedures and follow the guidelines provided for all personal searches.

68. Find a vacant spare room/cabin when it is necessary to conduct a personal search of a person.
69. If no room/cabin can be located, request that the owner/operator/captain identify a room or space that can be used for this purpose.
70. Make the room or area as safe and secure as possible before proceeding with the personal search.

ROLES AND RESPONSIBILITIES

Border Services Officers (BSOs)

71. Marine BSOs are responsible for:

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- a) abiding by these policies and procedures;
- b) completing all required training courses prior to undertaking any of the functions listed below;
- c) conducting examinations in accordance with training and this policy and procedures;
- d) conducting examinations as per the roles and responsibilities assigned;
- e) maintaining in working order; personal tools, personal protection equipment and shared equipment used for examinations;
- f) maintaining all equipment logs as per Canada Labour Code and as directed by the manufacturers' instructions;
- g) practicing due diligence in protecting their health and safety and that of the public;
- h) taking necessary precautions with respect to marine pleasure craft, traveller and officer safety before, during and after a marine pleasure craft examination;
- i) completing applicable reports and inputting results of marine pleasure craft referrals into the Telephone Reporting Centre System (TRCS). If the verification office does not have access to the TRCS, they will fax their results to the TRC for acquittal; and
- j) reporting to the superintendent and/or manager any problems or issues encountered while performing their duties.

CBSA Regional Management

72. CBSA Regional Management for Marine Operations are responsible for:

- a) promoting, monitoring and ensuring adherence to this policy and procedures;
- b) ensuring all BSOs who work in the marine environment receive the required training, as well as adequate tools and equipment;
- c) guiding and supporting BSOs in the performance of their duties;
- d) promoting, monitoring, and addressing any breach of procedural or health and safety requirements as well as recommending corrective measures;

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- e) ensuring examination results include additional information such as specific details pertaining to the referral request, as well as examination results and any information that may be pertinent for future risk assessment (i.e. closing the loop); and
- f) approving changes to examination procedures, if circumstances dictate.

Human Resources Branch - Marine Centre of Expertise

73. The Marine Centre of Expertise (MCE) is responsible for:

- a) developing, designing and delivering training related to marine pleasure craft examination;
- b) researching and developing new practices for efficient, safe, and effective marine pleasure craft examinations;
- c) conducting testing of contraband detection equipment related to marine examination;
- d) developing procedures for marine pleasure craft examinations;
- e) providing on-site guidance and assistance upon request to officers examining marine pleasure craft when feasible and circumstances dictate; and
- f) exchanging information and techniques with other domestic and international marine training facilities.

Programs Branch - Traveller Programs Directorate

74. Traveller Programs Directorate is responsible for:

- a) developing, implementing, modifying and approving all policies and procedures for marine pleasure craft examinations as required;
- b) monitoring adherence to this policy and procedures by the regions; and
- c) providing guidance and support to the MCE and regions on marine pleasure craft examination when required.

Programs Branch - Commercial Program Directorates – Secondary Examination Unit

75. Secondary Examination Unit is responsible for:

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Marine Pleasure Craft Examination

- a) Developing, implementing, maintaining and monitoring national policies, processes, regulations and legislation related to detection tools and technology; and
- b) Providing functional direction to the field in regards to detection technology tools used in contraband detection.

REFERENCES

76. Customs Act
Criminal Code
Canada Shipping Act
Canada Labour Code, Part II
CBSA Vessel Rummage Course
CBSA Small Vessel Examination Course
Remote Operated Vehicle Standard Operating Procedures
National Joint Council Occupational Health and Safety Directive
CBSA Uniform Policy and Standards of Appearance

EN Part 4 Chapter 10

Commercial Motor Vehicle Examination

CUSTOMS ENFORCEMENT MANUAL

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 10

COMMERCIAL MOTOR VEHICLE EXAMINATION POLICY AND PROCEDURES

28/09/12

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POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to conduct examinations of commercial motor vehicles in accordance with the provisions set out in the *Customs Act* and in recognition of the requirement for safety.

DEFINITIONS

2. Refer to Part 11- Glossary.

AUTHORITIES

Customs Act

3. Section 11.2 – Allows the designation of areas as customs controlled areas.
4. Section 11.3 – Owners or operators of customs controlled areas may grant access to authorized or prescribed persons only.
5. Section 13 – Importers, exporters, transporters, and their representatives are obligated to answer truthfully to questions asked with respect to commercial shipments and present the goods, remove any covering, unload any conveyance and open or unpack any package or container that a CBSA officer wishes to examine.
6. Sub section 99(1) (a) – Authorizes CBSA officers to examine goods and any containers or conveyance that may contain goods upon importation and up to the time of release.
7. Sub-section 99(1) (c) – Authorizes CBSA officers to examine any goods that have been reported under Section 95 at any time up to the time of exportation.
8. Sub-section 99(1) (f) – Authorizes the examination of any goods and conveyance a Border Services Officer (BSO) suspects on reasonable grounds contains goods that are in contravention of the *Customs Act*.

Note: This sub-section pertains to situations where a conveyance has been released and an officer wishes to examine it or where a conveyance is being exported and no goods have been reported under Section 95.

9. Section 153.1 – Authorizes the officer to arrest an individual that is physically or otherwise interfering with the officer's work or molesting the officer or attempting to do so in the performance of his/her duties.

PURPOSE AND SCOPE

10. The purpose of this policy is to provide guidelines to CBSA officers in the secondary examination of commercial motor vehicles.
11. It is also the purpose of this policy to emphasize the importance of health and safety when examining commercial motor vehicles, or working in close proximity to them.
12. This policy applies to all CBSA personnel.

BACKGROUND

13. One of the key activities of front line CBSA officers is to conduct examination of goods. Under the authority of the *Customs Act*, examinations allow CBSA officers to either confirm that goods have been properly reported and accounted for or to intercept goods and persons who are not complying with Canadian laws.
14. Due to limited resources and trade considerations, it is neither possible nor desirable to examine every shipment that is imported or is about to be exported. Therefore, CBSA is committed to maximize its resources by selectively targeting high-risk shipments that are considered to be greatest potential risk to the Canadian economy and/or society, while facilitating low-risk shipments whenever possible.
15. To support examinations of suspected high-risk shipments, CBSA continues to invest in state-of-the-art contraband detection technology to enhance our ability to cease contraband goods from entering Canada and to further enhance our ability to protect Canadians.

POLICY GUIDELINES

General

Note: Refer to Part Four, Chapter Four, Commercial Shipment Examination Policy and Procedures and Chapter Five, Container Examination Policy and Procedures for guidelines regarding the examination of commercial goods and marine containers.

16. It is recommended that officers complete the Commercial Motor Vehicle Examination Course delivered by Human Resources Branch – Enforcement Learning Programs - Training and Learning Directorate approved facilitators.

17. CBSA officers may conduct roving activities on commercial motor vehicle (CMV) drivers and passengers in the secondary area.

Note: Refer to Part Three, Chapter Four, Roving Policy and Procedures.

18. CMVs will be examined at their first point of arrival or departure. If examination facilities are not available at the first point of arrival, then they will be examined at the nearest examination facility inland.

19. The examination of commercial motor vehicles may vary in intensity.

20. All examinations will be conducted in a thorough and proficient manner.

21. All examinations will support CBSA values.

22. CBSA officers will be respectful of the personal belongings of the drivers, in particular the sleeper compartment of the cab, as this is where drivers live while on the road.

23. CBSA officers will record complete examination results, whether resultant or non-resultant, in the Accelerated Commercial Release Operations Support System (ACROSS) in accordance with the policy framework for Examination Results Recording.

Note: Refer to Part Four, Chapter Fourteen, *Commercial Goods Examination Results Recording*, for further details.

24. When dealing with drivers and passengers in difficult situations, officers will record in their notebook the details such as the time, the driver's/passenger(s) actions, statements, non verbal indicators and physical condition, as well as

any witnesses to an incident.

25. CBSA officers will use contraband detection equipment, tools, and detector dog teams to assist them in the examination of CMVs, whenever possible and when deemed appropriate.

Note: Refer to Part Four, Chapter One, Contraband Detection Equipment Policy and Procedures.

26. CBSA officers will familiarize themselves with indicators, concealment methods, and other related information by reading intelligence bulletins, alerts, and other relevant publications available at the port of entry.
27. CBSA officers will request that all persons in a CMV exit and stand in a safe location and at a reasonable distance, until the examination is complete. Discretion must be used when travellers such as persons with disabilities, infants, or sleeping children are involved.
28. Drivers will be allowed to view examinations of their CMV but will be kept at a reasonable distance outside of the cab to avoid any intentional interference.
29. If a person hinders an officer during an examination, the CBSA officers should attempt to defuse the situation. As a last resort, the person may be arrested and removed from the area.

Note: Refer to Part Six, Chapter One, Arrest and Detention and Part 9, Chapter 2, Prosecution Procedures.

30. In the event contraband is found in the conveyance and/or associated shipment, CBSA officers will arrest the responsible person(s) and may also remove them from the examination area.
31. Drivers referred to secondary solely for mandatory reasons, such as to present documentation, pay duty and or taxes, or complete required documentation, will not have their belongings or CMV systematically examined as a matter of course.
32. While conducting an examination for a specific referral type, CBSA officers must remain diligent for other unrelated contraventions.

Note: Refer to Part Three, Chapter Three, Reporting, Questioning, and Referral Policy and Procedures for information on referral types.

- 33.

34. Examinations will progress in intensity based on the building of indicators and supporting evidence discovered.
35. All items encountered in an examination will be treated as potential evidence.
36. CBSA officers will complete a report for all unusual examinations and forward it in a timely manner to the Intelligence Officer through the Occurrence Reporting System (ORS).
37. Any problem encountered in following this examination policy is to be reported immediately to the responsible superintendent.

Health and Safety

38. If the examination is to take place at a CBSA office as defined by the Doubling-up Policy for CBSA Ports of Entry, then two CBSA officers must be present (the second officer can be in reasonable proximity of the first). If the examination is take place off-site, then depending on the risk assessment, location, type of examination and personal interactions (with crew, passengers, clients, etc.), one or more CBSA officers can attend as per the Policy on Uniformed CBSA officers and/or Superintendents work at Off-site Locations.

Note: Refer to *Doubling-up Policy for CBSA Ports of Entry* at:

Note: Refer to *Policy on Uniformed CBSA Officer and/or Superintendents Working at Off-site Locations* at:

39. When conducting examinations, officers will take measures to protect the health and safety of the public and themselves.
40. CBSA officers may tactically reposition _____ from any situation during an examination that they believe poses a significant and unavoidable risk to the public and/or themselves.
41. CBSA officers must always wear the appropriate CBSA-issued personal protective equipment during examinations such as:
 - a. Leather gloves when operating power tools such as drills and saws;
 - b. Safety glasses when performing "NIK" tests or when operating power tools; and

- c. Leather, latex, or Nitrile gloves depending on the nature of the cargo being inspected.
- 42. CBSA officers will ensure CMVs cannot be moved during examinations. CMVs will be turned off, the keys removed from the ignition and CBSA officers will ensure the truck driver has engaged the trailer brakes before and throughout the examination.
- 43. By assessing each area they enter, CBSA officers will take appropriate action to protect themselves against any present or potential hazards.
- 44. During examinations, officers must be aware of the danger presented from needles, broken glass, razor blades, knives, and other sharp or pointed objects, exhaust fumes, high temperatures of engine and exhaust components, and acid from battery boxes.
- 45. CBSA officers will make all reasonable efforts to ensure that the temperature of loads contained in refrigerated units is not compromised during the course of the examination.
- 46. For health and safety reasons, CBSA officers will first proceed with a visual examination of an area, compartment or void space and, if necessary, use inspection mirrors and flashlights, fiberscopes, probes or X-ray equipment before running their hands freely in a compartment or void space.
- 47. Where fumigants have been used, or there is a possibility that they have been used on cargo currently or previously carried in a trailer/container, CBSA officers will follow the CBSA policy and procedures for dealing with fumigated marine containers.

Note: For contraband examination procedures for containers testing positive for volatile organic chemicals refer to the Fumigant Program User Guide online at:

- 48. When hazardous materials are encountered, safety precautions will be taken in accordance with any visible instructions (i.e. labels, placards) and Material Safety Data sheets accessible through the Canadian Centre for Occupational Health and Safety website.
- 49. In cases where an examination is being conducted specifically for prohibited goods such as drugs or weapons, precautionary measures must be taken to secure the goods and ensure the examining officer's safety.

Intensive Examinations

50. Based on the nature of the information in a lookout, CBSA officers will conduct a more comprehensive examination accordingly.
51. Examinations resulting from a lookout or target will include, but not be limited to, the inspection of areas such as
52. Examinations will progress in intensity based on the building of indicators and supporting evidence discovered.
53. If an officer suspects that a shipment contains prohibited items, such as weapons or drugs, an examination must be conducted at the earliest time possible.
54. Before any cutting, drilling, and/or dismantling is undertaken during an examination, officers must have reasonable grounds to do so and must be able to clearly articulate them.
55. Whenever possible, before proceeding with an examination that may involve disassembling, dismantling, or perhaps damaging baggage, goods or conveyances, the examining officer will consult with the superintendent. Where this is not possible or not practical, the superintendent is to be notified of the examination and results as soon as possible.
56. When there are reasonable grounds to suspect that goods are concealed behind or inside panels, seats, carpets, tires, gas tanks, engine compartments, etc., the examining officer will take the appropriate steps to remove or have the parts removed and perform a complete examination.
57. CBSA officers will not routinely dismantle electrical components for health and safety reasons. If dismantling an electronic component is warranted, CBSA officers will consult their superintendent and a qualified mechanic should be sought out where required.
58. CBSA officers must keep detailed notebook entries of intensive examinations as there is a greater likelihood that they may be required to clearly articulate the reasonable grounds more than for lower intensity examinations.
59. CBSA officers will complete a report for all unusual examinations and forward it in a timely manner to the responsible Intelligence Officer.

Examination of Personal Papers and Journals

Note: Refer to Part Four, Chapter Three, Personal Baggage, Goods, and Conveyance Examination Policy and Procedures for guidelines pertaining to the examination of personal papers and journals.

Photocopying and Electronic Scanning of Personal Papers and Journals

Note: Refer to Part Four, Chapter Three, Personal Baggage, Goods, and Conveyance Examination Policy and Procedures for guidelines pertaining to the photocopying and electronic scanning of personal papers and journals.

Pre-existing or Examination Damages

60. CBSA officers will take photographs before and after examinations when:

- a. It is likely there will be a complaint as a result of conducting an examination.
- b. There is pre-existing damage.
- c. They suspect that damage may be caused during an examination.
- d. The damage was caused by the offload service provider.
- e. They are going to dismantle or remove permanent fixtures or parts.
- f. They are going to drill, cut, or break an item to determine if it is concealing goods.

Note: Photographs taken prior to examination will record any existing damage. Photographs taken after examination will document the extent of the damage caused, if any.

61. Examining officers will photograph any unexpected accidental damage resulting from an examination.
62. In cases of pre-existing damage, or damage caused by an examination or by the offload service provider, officers will record all of the relevant information in their notebooks.

63. Where an offload service provider is on site, the CBSA officer will obtain a copy of the offload report when damage has occurred prior to and during the examination process.
64. When an examination causes damage, CBSA officers will prepare a report for management indicating the nature of the damage (e.g. scraped, broken, crushed, etc.), the extent, the suspected or actual cause, and include a copy of the offload report.

Examination Related Costs

65. The CBSA may pay for affected items to be brought back to their original state or will make monetary amends when an examination is non-resultant and damage has occurred.
66. The CBSA will not normally pay for damages to personal belongings or conveyances when they are or have been used in contravention of and seized under the Customs Act. Goods seized by the CBSA belong to the Crown from the moment of seizure.

Note: The regulations and policy for handling damage claims against the Crown are contained in Chapter Nine, Section Three, Financial Administration Volume, Finance and Administration Manual.

ROLES AND RESPONSIBILITIES

Regional Operations

Border Services Officers

67. Border Services Officers are responsible for:
 - a. Adhering to this policy and procedures.
 - b. Identify suspect CMVs and processing them in accordance with the CBSA policy and procedures.
 - c. Completing the Commercial Motor Vehicle Examination Course, where possible.
 - d. Taking all necessary precautions against all identified hazards before, during, and after a CMV examination.
 - e. Keeping detailed notes on all unusual or intensive CMV examinations.

- f. Recording complete examination results, whether resultant or non-resultant, in the Accelerated Commercial Release Operations Support System (ACROSS).

Regional Management

- 68. The Regional Management are responsible for:
 - a. Ensuring adherence to the policy and procedures related to CMV examinations.
 - b. Scheduling officers for the Commercial Motor Vehicle Examination Course, when possible.
 - c. Guiding and supporting CBSA officers in the performance of their duties.
 - d. Promoting and monitoring procedures and health and safety requirements and correcting any breaches.
 - e. Taking appropriate corrective action on any breaches of this policy.
 - f. Providing examination oversight and sharing accountability for quality entries.
 - g. Monitoring examination reports for completeness and accuracy.
 - h. Forwarding reports to the applicable Intelligence Officer through the ORS.

Operations Branch

Port of Entry Operations - Commercial Operations

- 69. Commercial Operations, Operations Branch, will be responsible for:
 - a. Ensuring the Policy, Standard Operating Procedures and Enforcement Manual relevant to commercial motor vehicle examination are carried out in the field.

Programs Branch

Commercial Secondary Unit

- 70. The Commercial Secondary Unit (CSU) is responsible for:
 - a. Developing, modifying, and approving all policies and procedures pertaining to CMV examinations in accordance with court jurisprudence.
 - b. Ongoing development and support of examination techniques and tools.
 - c. Monitoring adherence with this policy by the regions.

- d. Researching and developing new practices for efficient, safe and effective examinations.
- e. Providing guidance upon request to officers examining commercial motor vehicles.
- f. Ongoing program monitoring and performance measures.

Detection Program Policy Unit

71. The Detection Program Policy Unit is responsible for:

- a. Providing guidance to the field pertaining to the tools and instruments used for contraband detection.

Human Resources Branch

Enforcement Learning Programs

72. The Enforcement Learning Programs is responsible for:

- a. Developing and designing training related to commercial motor vehicle examinations.
- b. Delivering the Train the Trainer – Commercial Motor Vehicle Examination Course.
- c. Updating, coordinating, and delivering CMV examination training courses.
- d. Monitoring the delivery of the Commercial Motor Vehicle Examination Course by certified instructors to BSOs.

PROCEDURES

Note: For additional information refer to the Commercial Motor Vehicle Examination Course developed by the Human Resources Branch: Enforcement Learning Programs - Training and Learning Directorate.

Selective Examination

- 73. Take all the necessary precautions with respect to health and safety before, during, and after a CMV examination.
- 74. Review cargo documentation.

75. Conduct a visual examination of the CMV including sleeper and trailer.
76. Conduct a cursory examination of the interior of the tractor and trailer, and the cargo.
77. Record any peculiarities and indicators in their notebook.
78. Increase the intensity of examination as indicators dictate.

Intensive Level

79. Obtain information from the driver such as:
 - a. place of residence;
 - b. driver certification;
 - c. commercial driver's licence (CDL);
 - d. medical certification;
 - e. load pick-up location;
 - f. load drop off location; and
 - g. Type of cargo.
80. Examine the exterior of the tractor, including, but not limited to, the:

81. Examine the tractor interior, including, but not limited to, the:

82. Review documentation comparing them to the drivers' statements, such as:

- a. Commercial vehicle documents often known as the 'cab book';
- b. log book;
- c. trip receipts (i.e. gas, meals, etc.);
- d. vehicle inspection log;
- e. cargo manifest;
- f. bill of lading;
- g. invoices; and
- h. freight bills

83. Examine the cargo for indicators, such as:

84. Utilize contraband detection equipment and detector dog teams whenever possible and when appropriate.

Note: Refer to Part Four, Chapter One, Contraband Detection Equipment Policy and Procedures.

85. Any problem encountered in following this examination policy is to be reported immediately to the responsible superintendent.

86. Record complete examination reports, whether resultant or non-resultant, in the Accelerated Commercial Release Operations Support System (ACROSS) in accordance with the policy framework for Examination Results Recording.

Note: Refer to Part Four, Chapter Fourteen, *Commercial Goods Examination Results Recording*, for further details.

87. Complete a report for all unusual examinations and forward it in a timely manner to the responsible Intelligence Officer through the ORS.

88. The superintendent will be informed of examinations and given a file with all pertinent documentation for filing, and disseminating if required.

REFERENCES

Customs Act

Commercial Motor Vehicle Examination Course

North American Emergency Response Guidebook – A Guidebook for First Responders during the Initial Phase of a Hazardous Materials/Dangerous Goods Incident

Finance and Administration Manual

Doubling- up Policy for CBSA Ports of Entry

Policy on Uniformed CBSA Officer and/or Superintendent Working at Off-site Locations

CUSTOMS ENFORCEMENT MANUAL

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 11

RAIL EXAMINATION POLICY AND PROCEDURES

2016-06-22

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POLICY STATEMENT

1. It is the policy of the Customs Border Services Agency (CBSA) to conduct examinations of passenger and freight trains in accordance with the provisions set out in the Customs Act and in recognition of the requirement for health and safety.

DEFINITIONS

2. Refer to Part 11 – Glossary

AUTHORITIES

Customs Act

3. Section 11.2 allows the designation of areas as customs controlled areas.
4. Section 11.3 authorizes owners or operators of customs controlled areas to grant access to authorized or prescribed persons only.
5. Section 13 obligates importers, exporters, transporters, and their representatives to answer truthfully questions asked with respect to commercial shipments and present the goods, remove any covering, unload any conveyance, and open or unpack any package or container that a CBSA officer wishes to examine.
6. Subsection 99(1)(a) authorizes CBSA officers to examine goods and any containers or conveyance that may contain goods upon importation and up to the time of release.
7. Subsection 99(1)(c) authorizes CBSA officers to examine any goods that have been reported under section 95 at any time up to the time of exportation.

Note: This subsection pertains to situations where a conveyance has been released and the CBSA officer wishes to examine it or where a conveyance is being exported and no goods have been reported under section 95.

8. Subsection 99(1)(e) authorizes CBSA officers who suspect on reasonable grounds that the Customs Act or the regulations or any other act of Parliament might be contravened, to open or cause to be opened any package or container to examine the goods.
9. Subsection 99(1)(f) authorizes the examination of any goods and conveyance a CBSA officer suspects on reasonable grounds contains goods that are in contravention of the Customs Act.

PURPOSE AND SCOPE

10. The purpose of this policy is to provide guidelines to CBSA officers on the secondary examination of railcars and locomotives.
11. It is also the purpose of this policy to emphasize the importance of health and safety when examining trains.
12. This policy applies to all CBSA personnel.

BACKGROUND

13. One of the key activities of front line CBSA officers is to conduct examination of goods. Under the authority of the Customs Act, examinations allow CBSA officers to either confirm that goods have been properly reported and accounted for or to intercept goods and persons who are not complying with Canadian laws.
14. Due to limited resources and trade considerations, it is neither possible nor desirable to examine every shipment that is imported or is about to be exported. Therefore, CBSA is committed to maximize its resources by selectively targeting high-risk shipments that are considered to be greatest potential risk to the Canadian economy and/or society, while facilitating low-risk shipments whenever possible.
15. To support examinations of suspected high-risk shipments, CBSA continues to invest in state-of-the-art contraband detection technology to enhance our ability to cease contraband goods from entering Canada and to further enhance our ability to protect Canadians.

POLICY GUIDELINES

General

16. Where there are reasonable grounds to suspect a shipment is a national security threat, the examination must be conducted at First Point of Arrival (FPOA).
17. Examinations of commercial shipments for Health, Safety and Security (HSS) in the rail mode will be examined at the First Point of Operational Intervention (FPOI).
18. Examinations of commercial shipments for Commercial Compliance in the rail mode will be examined at the port of destination.

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19. If a release has been requested at FPOA then examination will occur at FPOI. For random referrals, the referral may be overridden. For selective referrals, the shipment can move to the port of destination for examination.
20. Examinations may take place at a CBSA licensed facility, which may include:
 - AR Type Sufferance Warehouses (i.e. Bonded rail yards/tracks);
 - PS Type Sufferance Warehouses (i.e. Private railway sidings);
 - BW Type Sufferance Warehouses;
 - Frontier Warehouses; or
 - Container Examination Facilities.

Note: Refer to

- a. Enforcement Manual Part Four, Chapter Three, Personal Baggage, Goods, and Conveyance Examination Policy and Procedures for guidelines on the examination of travellers and their goods;
 - b. Enforcement Manual Part Four, Chapter Four, Commercial Shipment Examination Policy and Procedures for guidelines regarding the examination of commercial goods; and
 - c. Enforcement Manual Part 4 Chapter Five, Container Examination Policy and Procedures for guidelines regarding the examination of intermodal marine containers on railcars.
21. Examination facilities provided by rail companies must meet the CBSA standards as set forth under Section 6 of the Customs Act. If a CBSA officer has to unload or move a railcar or locomotive to examine it, the moving will be done by and at the expense of the carrier.
 22. CBSA officers must have authorization from the rail company to be on railway company property or on rolling stock or any other rail equipment whether it is on or off duty.
 23. CBSA officers will familiarize themselves with indicators, concealment methods, trends, and other related information by reading intelligence bulletins, alerts, and other relevant publications available on-line and at the port.
 24. All examinations are to be conducted in a courteous and professional manner. CBSA officers will not respond in kind to individuals who may be upset and/or hostile about having their conveyance examined.

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25. CBSA officers will not be deterred from undertaking an examination based on a rail worker or company representatives' objections.
26. CBSA officers will record in their notebook incidents of dealings with upset or hostile persons, such as the time, the person's actions, statements, non-verbal indicators and physical conditions, as well as any witnesses to an incident.
27. All examinations will be conducted in a thorough, methodical and proficient manner.
28. Regardless of the type of referral, examining officers must ensure each examination is well – focused without ignoring the possibility that a contravention exists, that may be unrelated to the reasons behind the referral.
29. CBSA officers will use contraband detection equipment, tools, and detector dog teams to assist them in the examination of railcars and locomotives, whenever possible and when deemed appropriate.

Note: Refer to Enforcement Manual Part Four, Chapter One, Contraband Detection Equipment Policy and Procedures

30. In cases where an examination is being conducted specifically for prohibited goods such as drugs or weapons, take precautionary measures to ensure CBSA control over the goods.
31. Any container or cargo damages noted before, during, or after a rail examination must be photographed, documented and immediately reported to the CBSA superintendent on duty.
32. CBSA may pay for affected items to be brought back to their original state or will make monetary amends when an examination is non-resultant and damage has occurred.
33. CBSA will not normally pay for damages to personal belongings, cargo or conveyances when they are or have been used in contravention of and seized under the Customs Act.

Note: Seized goods belong to the Crown from the moment of seizure

Note: The authority to approve a claim against the Crown and/or to certify a payment for a claim against the Crown pursuant to the Financial Administration Act is contained in the CBSA Delegation of Financial Signing Authorities Matrix. The Supporting Notes to the Delegation Instrument explains the application of the authority while the CBSA's Guideline on Claims and Ex Gratia Payments, Chapter 19, Section Three of Finance

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Volume in the Finance and Administration Manual contains the detailed procedures and processes.

34. Following all examinations, CBSA officers will provide adequate details in the appropriate CBSA system(s) including the results of random referral examinations and document any overrides including all relevant justifications.
35. In any situation when the officer is able to access the goods, a description of the goods must be provided in the 'Goods Description' section of the examination template.

Note: Enforcement Manual Part Four Chapter 14 – Commercial Goods Examination Results Recording

36. BSOs will complete a report for all unusual examinations and forward it in a timely manner to the responsible intelligence office through Occurrence Reporting System (ORS).
37. Any problems encountered in following this policy are to be reported immediately to the responsible superintendent.

Health and Safety

38. At least two CBSA officers are required to examine a container and its cargo during a rail examination.

Note: This ensures a safe working environment as well as ensuring credibility, if contraband is discovered.

Note: Refer to Policy on Uniformed CBSA Officers and/or Superintendents Working at Off-site Locations and Doubling-up Policy for CBSA Ports of Entry.

39. While at the rail yard or near rail tracks, CBSA officers will communicate with each other using a radio communication system. Regular and frequent radio checks should be conducted to ensure effective and efficient communication and ensure that there are no health and safety concerns.
40. CBSA officers are permitted to tactically reposition from any situation during an examination where they believe it poses a significant and unavoidable health and safety risk to the public and/or themselves.
41. CBSA officers should exercise caution and take measures to protect their health and safety and that of the public.

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42. Prior to examination, testing for volatile organic chemicals (such as fumigants and solvents) is necessary for all marine intermodal containers. Ventilation may also be required.

Note: For fumigant testing procedures refer to the Fumigant Program User Guide.

Note: Refer to Enforcement Manual Part Four Chapter Five, Container Examination Policy and Procedures for detailed guidelines regarding the examination of containers.

43. Respiratory protection will be worn when and as required, as per the Respiratory Protection Program, and must meet the standards established by that program.

Note: Refer to the Respiratory Protection Program for further information.

44. CBSA personnel are to continually perform a risk assessment of the work area at all times while at the rail yard or near rail tracks and take appropriate actions to protect themselves against any present and/or potential hazards, including using/wearing personal protective equipment (PPE).
45. CBSA officers will wear the PPE required for the type of examination that is being conducted, which will be provided. At all times while working at the rail yard or near rail tracks, CBSA officers will wear CBSA approved protective footwear, hardhats and high-visibility vests.
46. CBSA officers will take the additional necessary preventative measures, such as wearing gloves, goggles, breathing apparatus, dusks masks, dosimeters, or whatever equipment is appropriate. Equipment must be in compliance with CSA standards and used accordingly to manufacturers and management instructions.
47. Safety equipment must meet the requirements established by the Canada Labour Code, Part II, Canada Occupational Health and Safety, the Canada Occupational Health and Safety Regulations Part XII, Safety Materials, Equipment, Devices and Clothing and the National Joint Council - Occupational Health and Safety Directive, Part XIII, Personal Protective Equipment and Clothing.
48. A record of all protection equipment provided by the employer shall be kept, per Canada Occupational Health and Safety Regulations Part I and Part XII Safety Materials, Equipment, Devices and Clothing 12.14(1) & (2).
49. When hazardous materials are encountered, safety precautions will be taken in accordance with any visible instructions (i.e. labels, placards),

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CANUTEC guidelines and Material Safety Data Sheets, and contact a rail commodity specialist.

Note: Refer to the Material Safety Data Sheets, accessible through the Canadian Centre for Occupational Health and Safety, and/or the CANUTEC website for information regarding dealing with dangerous goods.

Note: Refer to Memorandum D19-13-5 Transportation of Dangerous Goods for marking and labelling requirements on rail cars carrying dangerous goods.

50. CBSA officers should be aware of dangers such as:
- approaching trains and cars are often silent and can move with little or no warning;
 - railcars are often moved using their own momentum without the assistance of a locomotive; and
 - Locomotives do not normally use audible devices such as a bell or horn in the rail yard when performing switch moves.
51. CBSA officers must make advanced arrangements to meet the appropriate rail personnel and ensure they place visible blue flags (daytime) or blue lights (night time) around the working perimeter. They must also ensure that the front and rear of the train, railcar or locomotive are secured with the rail workers personal locks when the CBSA officers are working on the equipment.
- Note: Blue signals warn of persons present and that no equipment is to be moved on that particular rail. The only person who can remove a blue signal is the person who put it in place. To ensure this, rail company persons placing signals will lock them with their own personal lock and the CBSA officer will take possession of the keys or fuses for the particular lock during the examination process.
52. CBSA officers must be satisfied that railcars will not be moved during examinations.
53. During examinations, be aware of the danger for needles, broken glass, razor blades, knives, and other sharp or pointed objects, exhaust fumes, the possible high temperatures associated with engine and exhaust components, and acid from battery boxes.
54. For health and safety reasons, CBSA officers will first proceed with a visual examination of an area, compartment or void space and, if necessary, use inspection mirrors and flashlights, pole cameras, fiberscopes, probes or X-

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ray equipment. Officers will not freely run their hands in pocket compartments or visually limited areas without first conducting a visual examination.

Fall Protection Systems

55. CBSA officers will use a fall protection system (CSA Standards Z259.12-11), as per Canada Labour Code, Part II, Canada Occupational Health and Safety, to get on top of and examine the roof or interior of an open top, cylindrical or covered hopper, boxcar, etc. at a height of more than 2.4 meters above the nearest permanent safe level or above any moving parts of machinery, surface or thing.
56. Only CBSA officers trained in fall-protection systems will use such systems to reach the roof/top of a rail car.
57. CBSA officers may attach a fall-arrest device to an adjacent platform once they have climbed on top of a rail car. Various factors such as free fall, fall clearance and careful anchorage location must be taken into consideration at all times before deploying a fall protection system.
58. CBSA officers who are not trained in fall-arrest may climb the side of rail cars using permanently affixed ladders to inspect for contraband, and may climb a ladder at a height of more than 2.4 meters above the nearest permanent safe level, if they can use at least one hand to hold onto the ladder (also referred to as 'three point contact'), but may not climb on top of railcars.

Walking in a Rail Yard or Near Rail Tracks

59. When walking about a rail yard or near rail tracks, CBSA officers must:
 - a. Verify that their radio communication equipment is working properly;
 - b. Inform the yardmaster of CBSA presence and location within the rail yard;
 - c. Never run, always walk;
 - d. Never stand on or in-between the tracks;
 - e. Never step on rails, switches, guard rails, interlocking machinery or connections;
 - f. Walk a few feet away from tracks;
 - g. Be aware of debris, rocks, mud, water, snow, and ice;
 - h. Be alert and prepared for the movement of railroad equipment at all times even on adjacent tracks;
 - i. Carefully check in all directions before stepping across track, roadway, street, aisle, conveyor line or other similar area; and

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- j. Understand and be aware of rail yard sounds, hand signals, and light signals.
60. When walking on or near trains, CBSA officers must:
- a. Never climb on a moving car;
 - b. Never cross under engines/cars/couplers, never work under engines/cars/couplers, and never work while standing on main tracks, sidings, yards or storage tracks, without taking proper safety precautions;
 - c. Never jump off any equipment, it is strictly prohibited;
 - d. Never be caught between engine and car, between cars which are moving or about to move or between cars while coupling is being made;
 - e. Never step or climb on coupling links, striker castings, sliding centre sills, coupler shanks, angle cocks, train lines, journal boxes, uncoupling levers, truck sides or brake wells;
 - f. Only use the proper running boards, ladders, and hand holds, where provided when climbing on or off equipment;
 - g. Always maintain "three point contact" when climbing on a car;
 - h. ensure firm handhold and secure footing at all times while on equipment;
 - i. Always make sure there is a car length between themselves and a car when walking around a car in case of sudden movement;
 - j. Move to a safe place and, if practicable, clear off all tracks and move at least 20 feet from any main track switch stand when a train, engine or equipment is approaching; and
 - k. Stay clear of air lines between cars.

Examinations

Random Referral

- 61. Where possible, random referral examination of commercial shipments transported in railcars or intermodal containers on railcars should be conducted.
- 62. At the minimum, containers selected for random referral examination must be performed with Large Scale Imaging, Small Scale Imaging, or Detector Dog Services. If, at the time of examination, these detection tools are not available nor their use practicable, CBSA officers must examine 10% of the shipment.
- 63. CBSA officers must state in the examination narrative how the minimum requirements for random examinations were met.

Note: For marine containers on railcars, tailgate examinations must be performed in accordance with the procedures found in Section 14 of the

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Rail Examination

Fumigant Program User Guide: Dockside (Pier) Examination Procedures Overview.

64.

Examination at the rail sufferance facility or other CBSA licensed facility

- 65. Where possible, examination of commercial shipments transported in railcars or intermodal containers on railcars should be conducted.
- 66. If a discrepancy is detected, the railcar or intermodal container will be sent to a sufferance rail facility or another CBSA licensed facility, which can accommodate the offload, for further examination of the shipment.
- 67. HSS shipments may be escorted when being transferred by highway to another CBSA licensed facility.

68.

69.

70.

PS Type Sufferance Warehouse

- 71. Where possible, examination of commercial shipments transported in railcars or intermodal containers on railcars should be conducted.
- 72. In exceptional circumstances in which specialized equipment is required for HSS exams of bulk loads and with approval of regional management, CBSA officers may examine at a consignee's facility (e.g. private railway sidings) until they are satisfied that the integrity of the goods has been verified and all discrepancies have been negated.

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73.

Selective Referral

74. As the result of a selective referral, CBSA officers will determine the intensity of examinations based on the indicators that prompted the selection and that are uncovered during the examination.
75. CBSA officers will conduct full and intensive examinations of rail cars and locomotives when they are the subject of a lookout or a target or where the reasonable grounds to suspect a contravention is based on a number of indicators.
76. If a CBSA officer suspects that a shipment contains prohibited items, such as weapons or drugs, an examination must be conducted at the earliest time possible.
77. Before cutting, drilling, and/or dismantling are undertaken during an examination, officers must have reasonable grounds and must be able to clearly articulate them.
78. Before proceeding to an examination that may involve disassembling, dismantling or perhaps damaging baggage, goods or conveyances, whenever possible, the examining officer will consult with their superintendent. Where this is not possible or not practical, the superintendent is to be notified of the examination and results as soon as possible.
79. When the CBSA officer has reasonable grounds to suspect that goods are concealed behind or inside panels, seats, carpets, engine compartments, etc., they will take the appropriate steps to remove or have the parts removed and perform a complete examination.
80. CBSA officers WILL NOT dismantle electrical components and will engage a qualified mechanic for these purposes.
81. CBSA officers must keep detailed notebook entries of intensive examinations as they may be required to state the reasonable grounds more precisely than for lower intensity examinations

Examination of Personal Papers and Journals

Note: Refer to Enforcement Manual Part 4, Chapter 3, Personal Baggage, Goods, and Conveyance Examination Policy and Procedures for guidelines pertaining to the examination of personal papers and journals.

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Photocopying and Electronic Scanning of Personal Papers and Journals

Note: Refer to Enforcement Manual Part 4, Chapter 3, Personal Baggage, Goods, and Conveyance Examination Policy and Procedures for guidelines pertaining to the photocopying and electronic scanning of personal papers and journals.

Examination Damages

82. CBSA officers will take photographs before and after examinations when:
- It is likely there will be a complaint as a result of conducting an examination;
 - There is pre-existing damage;
 - They suspect that damage may be caused during an examination;
 - They are going to dismantle or remove permanent fixtures or parts; or
 - Drill, cut or break an item to determine if it is concealing contraband.

Note: Photographs taken prior to examination will record any existing damage. Photographs taken after examination will document the extent of the damage caused, if any.

83. Examining officers will photograph any unexpected accidental damage resulting from an examination.
84. In case of pre-existing damage or when damage is caused by an examination, CBSA officers will record all of the relevant information in their notebooks.
85. When an examination causes damage, CBSA officers will prepare a report for management indicating the nature of the damage (e.g. scraped, broken, crushed, etc.)

ROLES AND RESPONSIBILITIES

Regional Operations

Border Services Officers

86. Border Services Officers (BSO) are responsible for:
- Abiding by all policies and procedures ;
 - Identifying suspect railcars and locomotives and processing them in accordance with CBSA policy and procedures;
 - Completing the necessary training required to work effectively and safely in rail yards;

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- d. Taking all necessary precautions against all identified hazards before, during, and after rail examinations;
- e. Maintaining in safe and good working order all contraband detection equipment used in examinations;
- f. Keeping detailed notes on all unusual or intensive rail examinations; and
- g. Completing reports and inputting results and examination comments of rail examinations into all applicable CBSA systems.

Regional Management

Superintendents

87. CBSA superintendents are responsible for:
- a. Ensuring that BSOs who work with commodities shipped in marine containers as a function of their duties have reviewed the Fumigant Program User Guide;
 - b.
 - c. Providing examination oversight and sharing accountability for quality entries;
 - d.
 - e. Ensuring examination results are consistently recorded in accordance with policy guidelines;
 - f. Ensuring examination results include additional information (e.g. specific details pertaining to the referral request to inform future targeting and close targets); and
 - g. Performing periodic monitoring on the quality of examination results entered by BSOs.

Operations Branch - Commercial and Trade Operations Division

Port of Entry Operations – Commercial Operations

88. Commercial Operations, Operations Branch, will be responsible for ensuring the Policy, Standard Operating Procedures and Enforcement Manual relevant to the rail examination are carried accordingly.

Programs Branch - Commercial Program Directorate – Secondary Examination Unit

Secondary Examination Unit

89. The Secondary Examination Unit (SEU) is responsible for:

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- a. Developing, modifying, and approving all policies and procedures pertaining to rail examination in accordance with court jurisprudence;
- b. Ongoing development and support of examination techniques and tools;
- c. Providing guidance to the field pertaining to the tools and instruments used in contraband detection; and
- d. Monitoring adherence with this policy by the regions.

PROCEDURES

Planning the Examination

90. Select the train for examination prior to arrival.
91. Obtain railcar list for particular train.
92. Higher-risk cars should be targeted.
93. Review factors which will affect the type of examination you will perform including intelligence, location of exam, availability of Detector Dog Service and other contraband detection equipment.
94. Contact Rail Police (they in turn can contact dispatcher at last opportunity for a safe stop).
95. Notify rail companies if the examination, either planned or underway, is likely to cause a schedule delay or, if they require a train, railcar, or locomotive to be moved to a sidetrack.
96. Arrange for blue flagging (or blue lighting) of track.
97. Organize examination team (4-8 CBSA officers) and assign specific roles each officer will play in the examination.
98. Organize equipment based on availability and the type of examination.
99. Review the target indicators and probable grounds that led to the referral of the shipment for examination.

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100. Identify health and safety concerns and any potential examination hazards. Be aware of procedures for hazardous materials and fumigation procedures.

Note: For fumigant testing procedures refer to the Fumigant Program User Guide

Note: Refer to Enforcement Manual Part 4 Chapter Five, Container Examination Policy and Procedures for detailed guidelines regarding the examination of containers.

Upon arrival of the Train

101. Where feasible and viable before beginning any examination of a railcar ensure the locomotive has been entirely shut down.

Note: Where a shutdown is not possible, make certain that rail yard staff are aware of an ongoing examination and take measures to assure that the train will not be engaged.

102. The train must be blue flagged (daylight) or blue lighted (night /or bad visibility) at both ends.

Note: Do not begin examination of the train until this has occurred.

103. The conductor and engineer are to be consulted, and instructed to notify the switchman on duty that the train has been stopped on the track and that a CBSA examination will take place.

104. Communicate with the switchman to ensure the track is "dead" to avoid potential collision from other trains using the same track.

Note: The switches must be lined away so as to prevent movement on to the track.

105. Before commencing the examination, secure the switch (when applicable) with a personal lock other than the standard switch lock.

106. When the tracks are coupled up at one end only, the same protection is required at the end of each track that is coupled to the lead.

Examination at the Rail Yard

107. Contact the rail yard manager to indicate that the exam is going to take place.

108. Yard managers can make arrangements to have the train moved to a safe location and blue flagged.

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109. Yard managers can flag a targeted rail cart to be moved to a “dead” track upon its arrival in the yard.

Examination of the Train

110. Meet train upon arrival and observe the train and crew for any indicators and record information on the examination report.
111. Secure crew and conduct a crew check.
112. Two CBSA officers should be assigned to examine the inside of the locomotive and crew areas.
113. Two to four CBSA should be assigned to inspect the outside of the locomotive and all engine related areas.
114. The locomotive has numerous areas of concealment and a thorough and systematic approach must be used in its examination.
115. CBSA officers must ensure that the locomotive has been shut down prior to examination.
116. Two to four CBSA officers will conduct the sweep of the train on both sides, car by car.
117. Conduct the examination of the rail car in a thorough and systematic manner.
- 118.
- 119.
- 120.
- 121.
- 122.

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123. Railroad personnel should be used in any circumstance that requires a box car door to be opened.
- 124.
- 125.
126. Progressively intensify the level of examination when indicators exist that lead to reasonable grounds to suspect that a railcar or locomotive contain contraband, undeclared or falsely reports goods or when contraband, undeclared or falsely reported goods, or evidence is discovered.
127. Do not freely run hands in pocket compartments, void areas, etc. in rail cars or locomotives without a visual examination or, if necessary, the use of inspection mirrors, flashlights, fiberscopes, probes or x-ray equipment first.
- 128.
129. Record in the notebook, incidents of dealings with upset or hostile persons, such as the time, their actions, statements, and physical condition, and any witnesses to an incident.
130. Photograph any anomalies or unusual markings, modifications, etc.
131. Notify the yardmaster immediately, if removing contraband, a seized conveyance or a person placed under arrest.
132. Notify the rail police when placing a person under arrest. Rail police have their own procedures to follow when an incident occurs on rail company property.
133. Conduct a post examination briefing to ensure that all CBSA officers are satisfied with the examination and that no areas of concern have been missed or overlooked.
134. Notify the appropriate authority the examination is completed and the train is released (e.g. yardmaster).

Note: CBSA officers must ensure all employees are notified and out of danger before locks and blue signals are removed.

135. All commercial examinations results and comments will be recorded in the applicable systems in accordance with the Examination Results Recording Policy.

Note: Refer to Enforcement Manual Part 4 Chapter 14 – Commercial Goods Examination Results Recording

REFERENCES

Canada Labour Code

Canada Occupational Health and Safety Regulations

Canadian Centre for Occupational Health and Safety

Canadian Environmental Protection Act

CANUTEC website

Customs Act

D Memoranda

Doubling-up Policy for CBSA Ports of Entry

Financial Administration Act

Fumigant Program User Guide

Occupational Health and Safety in the public service

Policy on Uniformed CBSA Officers and/or Superintendents Working at Off-site

Locations

Transport Canada- Emergency Response Guide

CUSTOMS ENFORCEMENT MANUAL

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 12

POSTAL EXAMINATION POLICY AND PROCEDURES

30/08/04

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to conduct examinations of international mail in accordance with the provisions set out in the *Customs Act*.

DEFINITIONS

2. Refer to "Glossary".

AUTHORITIES

Canada Post Corporation Act

3. Subsection 42(1) – All mail arriving in Canada from a place outside Canada that contains or is suspected to contain anything the importation of which is prohibited, controlled or regulated under the Customs Act or any other Act of Parliament shall be submitted to a customs officer".

Customs Act

4. Subsection 12(3)(a.1) – In the case of goods imported by courier or as mail, goods shall be reported by the person who exported the goods to Canada.
5. Subsection 99(1)(b) – An officer may at any time up to the time of release, examine any mail that has been imported and, subject to this section, open or cause to be opened any such mail that the officer suspects on reasonable grounds contains any goods referred to in the *Customs Tariff*, or any goods the importation of which is prohibited, controlled or regulated under any other Act of Parliament, and take samples of anything contained in such mail in reasonable amounts.
6. Subsection 99(1)(c.1) – An officer may at any time up to the time of exportation, examine any goods that have been reported under section 95 and open or cause to be opened any package or container of such goods and take samples of such goods in reasonable amounts.
7. Subsection 99(1)(e) – An officer may, where the officer suspects on reasonable grounds that this Act or the regulations of any other Act of Parliament administered or enforced by him or any regulation thereunder have been or might be contravened in respect of any goods, examine the goods and open or cause to be opened any package or container thereof.

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8. Subsection 99(1)(f) – An officer may where the officer suspects on reasonable grounds that this Act or the regulations of any other Act of Parliament administered or enforced by him or any regulations thereunder have or might be contravened in respect of any conveyance or any goods thereon, stop, board, and search the conveyance, examine any goods thereon and open or cause to be opened any package or container thereof and direct that the conveyance be moved to a customs office or other suitable place for the search, examination, or opening.
9. Subsection 99(2) – An officer may not open or cause to be opened any mail that is being imported or exported and that weighs thirty grams or less unless the person to whom it is addressed consents or the person who sent it has completed and attached to the mail a label in accordance with article RE 601 of the Letter Post Regulations of the Universal Postal Convention.
10. Subsection 99(3) – An officer may cause imported mail, or mail that is being exported, that weighs thirty grams or less to be opened in his or her presence by the person to whom it is addressed, the person who sent it or a person authorized by either of those persons.

Proceeds of Crime (Money Laundering) and Terrorist Financing Act

11. Subsection 17(1) - An officer may examine any mail that is being imported or exported and open or cause to be opened any such mail that the officer suspects on reasonable grounds contains currency or monetary instruments of a value equal to or greater than the amount prescribed for the purpose of subsection 12(1). (The threshold is \$10,000 Canadian).
12. Subsection 17(2) - 17(1) operates under the restriction that an officer may not open or cause to be opened any mail that weighs 30 grams or less unless the person to whom it is addressed consents or the person who sent it consents or has completed and attached to the mail a label in accordance with article 116 of the Detailed Regulations of the Universal Postal Convention.

Tobacco Act

13. Section 13 prohibits a person in Canada, other than a retailer or a manufacturer, to cause tobacco products to be mailed by ordering them, for consideration, from a foreign supplier.
14. Under the terms of a Memorandum of Understanding with Health Canada, customs investigators have been designated as “inspectors” pursuant to the *Tobacco Act* and are authorized to enforce section 13 of the *Tobacco Act*.

PURPOSE AND SCOPE

15. The purpose of this policy is to provide guidelines to customs officers in the examination of international mail.
16. This policy applies to all customs officers.

POLICY GUIDELINES

General

17. Customs officers must have reasonable grounds to suspect that an international mail item is carrying “goods” before they can open and examine it. Passports are considered goods. Currency, while not considered “goods” under the *Customs Act*, can be examined under the authority of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.
18. Officers may conduct selective, mandatory or random examinations (including blitzes) to determine the presence of prohibited, regulated or controlled goods and to verify declarations and look for invoices.
19. When declarations do not accurately report the value, descriptions, quality or country of origin, and the officer finds evidence that the exporter made a deliberate attempt to evade duties or taxes or otherwise circumvent customs requirements, the goods may be subject to an administrative monetary penalty (AMP) or seizure. (See Part 5, Chapter 1 Commercial Seizures, Ascertained Forfeitures and Administrative Monetary Penalties).
20. When seizure action is applicable, the Customs Seizure Receipt (form K19) is sent to the exporter and the Notice of Seizure (form K138) is sent to the addressee. If there is evidence that the addressee is involved with the exporter, the addressee’s name is added to the seizure document as an associate.
21. Officers will not open international mail items weighing less than thirty grams without the consent of the addressee, sender, or a person authorized by either of these persons. It is acceptable for an officer to open the item on their behalf if they so agree in writing.

Note: The thirty-gram rule applies to the contents of international mail items. Therefore, if an item is suspect, the weight of packaging can be estimated and subtracted from the overall weight to determine if the contents weight less or more than thirty grams.

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22. Consent will only be sought if the officer has reasonable grounds to suspect that the mail item weighing less than thirty grams contains prohibited, regulated, or controlled goods.
23. If permission is refused, mail will be returned to the Canada Post Corporation (CPC) as undeliverable. Even if an officer suspects the package of containing contraband such as drugs, the package must be returned to CPC.
24. All examinations will be conducted in a thorough, methodical, and proficient manner.
25. Officers will utilize the necessary contraband detection tools and equipment whenever possible and when deemed appropriate.

Note: Refer to Part Four, Chapter One, Contraband Detection Equipment Policy and Procedures.

26. Officers may use non-intrusive examination techniques such as x-rays on items weighing thirty grams or less, but cannot use intrusive detection devices such as probes. Techniques that do not allow personal correspondence to be read and do not cause the package to be opened are acceptable. Detector dogs are acceptable if there is no danger that a dog will inadvertently cause a package to be opened.
27. All items encountered in an examination will be treated as if they are potential evidence.
28. Officers will familiarize themselves with indicators, concealment methods, and other related information by reading intelligence bulletins, alerts, and other relevant publications available at the port.
29. Officers will record in their notebook and in the Postal Import Control System (PICS) the details of all resultant examinations. Officers may also record non-resultant examinations if they believe the information is important to share (e.g. to report that a targeted examination revealed no contraband).
30. Officers will key into the Occurrence Reporting System, for the Regional Intelligence Officer and/or Targeting Unit, reports on all resultant examinations. They may also key information on non-resultant examinations if they deem there is a reason to do so.
31. All mail items that are opened and examined are to be identified as opened and examined by closing the items with customs tape, Form E608, *Opened by Customs* or stamping the mail item "Examined by Customs."

32. Any problems encountered in following this policy or in the performance of an examination are to be reported immediately to the responsible customs superintendent or manager.

Health and Safety

33. When conducting examinations, officers will take measures to protect themselves and the health and safety of those around them.
34. Officers will take the necessary preventative measures such as wearing gloves, goggles, breathing masks, or whatever equipment is appropriate, to protect their health and safety during examinations.
35. When hazardous materials are encountered, safety precautions will be taken in accordance with any visible instructions (i.e. labels, placards), CANUTEC guidelines, and Material Safety Data sheets accessible through the Canadian Centre for Occupational Health and Safety website at www.ccohs.ca.
36. When required, officers through their superintendent will call responsible agencies that have the expertise to deal with hazardous materials that have been encountered.

Note: Refer to D5-1-4 for detailed guidelines pertaining to international mail containing intoxicating liquors and dangerous materials.

Items Subject to Solicitor-Client Privilege

37. Officers will not normally open letters or packages addressed to/from a lawyer's office to/from individuals or entities that clearly contain only documents, as the documents are potentially privileged.

Note: Letters and packages marked as "solicitor-client privilege" or "documents" meet the criteria and will be treated as privileged.

38. Packages containing passports may be examined under section 99 of the *Customs Act* and may be detained under section 101 of the *Customs Act*. Passports are not considered documents subject to solicitor-client privilege.
39. Letters or packages subject to solicitor-client privilege should be released or accounted for in the normal manner unless there are reasonable grounds to suspect the letter or package contains more than documents subject to privilege. The item may then be opened (subject to the 30 gram rule) to determine admissibility, tariff treatment or the presence of contraband, unreported goods or falsely reported goods.

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Note: Documents within may also be scanned to the “minimum extent necessary to establish whether it is properly the subject of solicitor-client privilege” (Dickson J. – *Solosky v. The Queen* {1980}).

40. Unreported, falsely reported, or illicit goods discovered within letters or packages sent between lawyers’ offices and individuals or entities may be removed and dealt with in accordance with seizure and administrative monetary penalties (AMP’s) policies.

Note: Refer to Part Five, Chapters One through Five for policy and procedures relating to seizures and AMP’s.

41. Documents may be retained and copied as evidence of a contravention if they are clearly not subject to solicitor-client privilege (e.g., invoices). Where there is a suggestion of any degree the documents are subject to privilege, the documents should be sealed and either returned for processing or sealed in an evidence bag and set aside for review by a court for confirmation of privilege.
42. Packages addressed to/from a lawyer or a law firm that clearly contain casual or commercial goods do not attract solicitor-client privilege and may be processed in the normal manner.

Examination of Personal Papers and Journals

Note: Refer to Part Four, Chapter Three, Personal Baggage, Goods, and Conveyance Examination Policy and Procedures for guidelines pertaining to the examination of personal papers and journals.

43. Officers will not read any correspondence contained in an international mail item. However, if an item has been seized (and only if it has been seized) officers are permitted to scan the correspondence to the minimum amount necessary to determine if the correspondence should be referred to Citizenship and Immigration Canada.

Note: The term correspondence does not include invoices, order forms, cheques, newspapers, magazines, books, catalogues, blank forms, manuscripts, or recorded mass storage devices such as tapes, microfilm, or discs (unless the devices contain personal material).

Note: Refer to D-5-1-1 and R-5-1-1 for additional information regarding international mail containing personal papers and journals.

Seizures of foreign tobacco imported by mail pursuant to the *Tobacco Act*

44. Undeclared tobacco products should be seized under the *Customs Act* with no terms of release.
45. Declared tobacco products, mailed to an individual in commercial quantities, should be detained under section 101 of the *Customs Act* and the case should be referred to Investigations. CBSA Investigators (acting as Health Canada tobacco inspectors) may then conduct a *Tobacco Act* investigation.
46. Investigators will consider seizure and prosecution pursuant to the *Tobacco Act* if:
 - a) there is reason to believe that the tobacco products are destined to end users in Canada;
 - b) there is evidence that the person in Canada caused the goods to be mailed by ordering them for consideration;
 - c) the importer is a repeat offender or acted with indifference or premeditation;
 - d) there is no *Customs Act* offence (i.e. the tobacco products were declared); or
 - e) the amount of tobacco meets Health Canada's prosecution guidelines.
47. If tobacco products imported by international mail are consigned to a Canadian **retailer or manufacturer**, they must be provided with an opportunity to meet the marking and labelling requirements of the *Tobacco Act*, the *Excise Act*, provincial tobacco regulations and to pay the applicable duties and taxes. The CBSA, via Investigations, should contact Health Canada in cases involving suspected violations of the Tobacco Product Information Regulations by retailers or manufacturers.

International Mail Examination Damages

Note: Refer to D5-1-5 for detailed procedures pertaining to the handling of damaged international mail items and their contents, and the areas of responsibility for repackaging.

48. Officers will take photographs before and after examinations when:
 - a) it is likely there will be a complaint as a result of conducting an examination;

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- b) there is pre-existing damage;
 - c) they suspect that damage may be caused during an examination;
 - d) they are going to dismantle or remove permanent fixtures or parts; or
 - e) drill, cut, or break an item to determine if it is concealing goods.
49. Where feasible X-ray photographs of the item should be included.
50. Examining officers will photograph any unexpected accidental damage resulting from an examination.
51. In some instances international mail items are received in Canada with the wrapping in damaged condition. CPC is responsible for the repair to the packaging of any item damaged while in the course of post or while in customs control. When a mail item with a damaged wrapper is found at the primary sorting area, the particulars and extent of damage are to be noted on the outside cover of the item and the endorsement initialled by both customs and CPC. In cases of pre-existing damage discovered during secondary examination, or when damage is caused by an examination, officers will record all of the relevant information in their notebooks, in PICS and in the damage log.
52. When an examination causes damage, officers will record it in the Damage Log and prepare a report for the superintendent indicating the nature of the damage (e.g. scraped, broken, crushed, etc.), its extent, and its suspected or actual cause as well as making a notation in PICS.

Examination Related Costs

53. The CBSA may pay for affected items to be brought back to their original state or will make monetary amends when an examination is non-resultant and damage has occurred.
54. The CBSA will not normally pay for damages to personal belongings when they are or have been used in contravention of and seized under the *Customs Act*. Goods seized by customs belong to the Crown from the moment of seizure.

Note: The regulations and policy for handling damage claims against the Crown are contained in Chapter Nine, Section Three, Financial Administration Volume, Finance and Administration Manual.

55. Damages will not be paid for that occurs before or after customs processing.

ROLES AND RESPONSIBILITIES

Customs Officers

56. Customs officers are responsible for:

- a) adhering to this policy and procedures;
- b) identifying suspect international mail items and processing them in accordance with CBSA policy and procedures;
- c) taking all necessary precautions against all identified hazards before, during, and after mail examinations;
- d) maintaining in safe and good working order all contraband detection equipment used in examinations;
- e) keeping detailed notes on all resultant mail examinations; and
- f) keying reports on resultant mail examinations, into the Occurrence Reporting System (ORC) for the Regional Intelligence Officer and/or Targeting Unit and advising their superintendent. Reports on non-resultant examinations may also be keyed if the officer believes the information will be important.

Note; Positive or negative results should be noted in PICS.

Customs Superintendents

57. Customs superintendents are responsible for:

- a) ensuring that the policies and procedures related to mail examinations are adhered to by customs officers;
- b) guiding and supporting customs officers in the performance of their duties;
- c) promoting and monitoring proper examination procedures and compliance with health and safety requirements, and correcting any breaches;
- d) ensuring all required health and safety equipment is available;
- e) taking appropriate corrective action on any breaches of this policy; and

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- f) ensuring reports on resultant examinations are keyed into ORS for the Regional Intelligence Officer and/or Targeting Unit and advising officers on which non-resultant examinations are important to share through this reporting system.

Customs Contraband, and Intelligence and Investigations

58. Customs Contraband, Intelligence and Investigations (CCII) is responsible for:
- a) developing, modifying, and approving policies and procedures pertaining to international mail examination in accordance with court jurisprudence;
 - b) ongoing development and support of examination techniques and tools;
 - c) providing guidance to the field pertaining to the tools and instruments used in contraband detection; and
 - d) monitoring adherence with this policy by the regions.

PROCEDURES

Note: Refer to Memorandums D5-1 and R5-1 for guidelines on the processing and examination of international mail.

REFERENCES

59. *Customs Act*
Finance and Administration Manual
D Memorandums

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Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 13

COURIER EXAMINATION POLICY AND PROCEDURES

2015-01-28

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Courier Examination Policy And Procedures

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to conduct examinations of international courier items in accordance with the provisions set out in the *Customs Act*.

DEFINITIONS

2. Refer to "Glossary".

AUTHORITIES

Customs Act

3. Section 11.2 – Allows the designation of areas as customs controlled areas.
Section 11.3 – Owners or operators of customs controlled areas may grant access to authorized or prescribed persons only.
4. Paragraph 12(3)(a.1) – States that the goods imported by courier or as mail must be reported by the person who exported the goods to Canada.
5. Paragraph 12(3)(b) – Requires that goods imported on board a conveyance arriving in Canada must be reported to the CBSA by the person in charge of the conveyance.
6. Section 13 – Importers, exporters, transporters, and their representatives are obligated to answer truthfully questions asked with respect to commercial shipments and present the goods, remove any covering, unload any conveyance, and open or unpack any package or container that a CBSA officer wishes to examine.
7. Paragraph 99(1)(a) – Authorizes CBSA officers to examine goods and any containers or conveyance that may contain goods upon importation and up to the time of release.
8. Paragraph 99(1)(c) – Authorizes CBSA officers to examine any goods that have been reported under section 95 at any time up to the time of exportation.
9. Paragraph 99(1)(e) – Authorizes CBSA officers who suspect on reasonable grounds that this Act or the regulations of any other Act of Parliament might be contravened, to open or cause to be opened any package or container in order to examine the goods.
10. Paragraph 99(1)(f) - Authorizes CBSA officers who suspect on reasonable grounds that this Act or the regulations of any other Act of Parliament might be

contravened, to stop, board, and search a conveyance, to open or cause to be opened any package or container in order to examine the goods, and direct the conveyance be moved to a CBSA office or other suitable place for the search, examination, or opening.

PURPOSE AND SCOPE

11. The purpose of this policy is to provide guidelines to CBSA officers in the examination of international courier items.
12. This policy applies to all CBSA officers.

POLICY GUIDELINES

General

13. CBSA officers will conduct a review of pre-arrival of the courier Cargo/Release List and target suspect courier shipments for examination. There are no national standards for review times. Local CBSA offices and on-site couriers will come to mutually acceptable time limits.
14. CBSA officers may do selective, mandatory or random examinations to determine the presence of prohibited, regulated or controlled goods and to verify declarations and look for invoices.
15. All examinations will be conducted in a thorough, methodical, and proficient manner.
16. CBSA officers will utilize the necessary contraband detection tools and equipment, and detector dog teams whenever possible and when deemed appropriate.

Note: Refer to Part Four, Chapter One, Detection Equipment.
17. All items encountered in an examination will be treated as if they are potential evidence.
18. CBSA officers will familiarize themselves with indicators, concealment methods, and other related information by reading intelligence bulletins, alerts, and other relevant publications available at the port.
19. CBSA officers will record in their notebook the details of any resultant examinations. CBSA officers may also record results of non-resultant examinations if they believe the information is significant.
20. CBSA officers will key into the Occurrence Reporting System, for the Regional Intelligence Officer and/or Targeting Unit, reports on all resultant examinations. They may also key information on non-resultant examinations if they deem there a reason to do so. For example, the officer may report that a targeted examination revealed no contraband.

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21. CBSA officers will advise the superintendent of any examinations resulting in enforcement action and of any examinations that involve problems or extenuating circumstances.
22. CBSA officers will follow procedures set out locally between the courier and the CBSA in the event that goods are removed from a warehouse.

Enforcement Action Documentation

23. Commercial shipments are subject to administrative monetary penalties.
24. When the entity who exported the goods is an individual, the applicable enforcement action is seizure rather than an administrative monetary penalty.
25. Normally, goods that may be subject to enforcement actions should be removed from the Cargo/Release list by way of a form Y50. The importer or agent must then present an individual accounting package for the shipment and any subsequent enforcement action is in the name of the importer.
26. When specified goods (e.g. tobacco, alcohol, firearms, child pornography, and drugs) are encountered and enforcement action is warranted, the name of the principal on seizure receipts or notices of penalty assessments may be either the exporter or importer based on the following:
 - a) the exporter is named when, immediately following an examination, enforcement action is taken based on the exporter's declaration (i.e. there are no links between the importer and the contravention). If the officer finds evidence that confirms that the importer knew of the attempt to contravene the *Customs Act*, the importer may be named as an associate.
 - b) the importer is named when a declaration was requested and received (i.e. a link exists between the importer and the contravention).

Note: See Part 5, Chapter 1, Commercial Seizures, Ascertained Forfeitures and Administrative Monetary Penalties, for information on goods specified by means of Ministerial Directive.

Significant Undervaluation Discovered in the Courier Low Value Shipment (LVS) Program

27. In circumstances where physical evidence has been discovered during an examination of commercial goods indicating that the exporter of the goods has provided an untrue value for the release of the shipment, and that the undervaluation is significant, an action in respect of the goods may be taken under subsection 110(1) of the *Act*. The action shall be taken under the exporter's name, as it is the entity that is

responsible for providing true and accurate information under section 7.1 of the *Customs Act*.

28. As the action is taken under the exporter's name, the Canadian importer must be notified through a Third-Party Notification (K138).
29. When the undervalued portion is less _____ a seizure action against the goods will not be initiated. Occurrences where the undervalued portion is less _____ will continue to be treated through the normal Y50 Reject Document Control process described previously.
30. The Standard Operating Procedures (SOP) of the Courier LVS Program provide more specific information.
31. When documentation indicates significant undervaluation in regard to a Customs Self-Assessment (CSA) importer's shipment, the CSA status of the importer should be confirmed before considering action. The CSA status should be obtained from the CCS database. If the importer is confirmed to be a CSA member, seizure action is not applicable, and the goods may be released.

Health and Safety

32. When conducting examinations, officers will take measures to protect the health and safety of themselves and those around them.
33. CBSA officers will take the necessary preventative measures such as wearing gloves, goggles, breathing masks, or whatever equipment is appropriate, to protect their health and safety during examinations.
34. During examinations, CBSA officers must be aware of the danger from needles, broken glass, razor blades, knives, and other sharp or pointed objects.
35. When hazardous materials are encountered, safety precautions will be taken in accordance with any visible instructions (i.e. labels, placards), CANUTEC guidelines and Material Safety Data sheets accessible through the Canadian Centre for Occupational Health and Safety website at www.ccohs.ca. These sheets should be posted in readily accessible areas.

Items Subject to Solicitor-Client Privilege

36. Officers will not normally open letters or packages addressed to/from lawyer's offices to/from individuals or entities if they clearly contain only documents, as they are potentially privileged.

Note: Letters and packages addressed to/from a lawyer's office or marked as "solicitor-client privilege" or "documents" meet the criteria and will be treated as privileged.

Note: Packages containing passports may be examined under section 99 of the *Customs Act* and may be detained under section 101 of the *Customs Act*. Passports are not considered documents subject to solicitor-client privilege.

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Note: In the courier stream, there is no restriction on examining letters weighing less than 30 grams without permission, as is the case in the postal stream.

37. Letters or packages subject to solicitor-client privilege should be released or accounted for in the normal manner unless there are reasonable grounds to suspect the letter or package contains more than documents subject to privilege. The item may then be opened to determine admissibility, tariff treatment or the presence of contraband (e.g. monetary instruments), unreported goods or falsely reported goods. However, such openings should not be conducted without cause.

Note: Documents within may also be scanned to the “minimum extent necessary to establish whether it is properly the subject of solicitor-client privilege” (Dickson J. – *Solosky v. The Queen* {1980}).

38. Unreported, falsely reported, or illicit goods discovered within letters or packages sent between lawyers’ offices and individuals or entities may be removed and dealt with in accordance with seizure and Administrative Monetary Penalty System (AMPS) policies.

Note: Refer to the AMPS Reference Manual and EN Manual, Part Five, Chapters One through Four for policy and procedures relating to seizures and AMPS.

39. Documents may be retained and copied as evidence of a contravention if they are clearly not subject to solicitor-client privilege (e.g., an invoice for goods). Where there is a suggestion of any degree the documents are subject to privilege, the documents should be either returned for processing or sealed in an evidence bag and set aside for review by a court for confirmation of privilege.

Note: Refer to Part Five, Chapters One through Four for policy and procedures relating to handling of evidence.

40. Packages addressed to/from a lawyer or a law firm that clearly contain casual or commercial goods do not attract solicitor-client privilege and may be processed normally.

Note: This should be evident from the declaration label that is attached to the package.

Examination of Personal Papers and Journals

Note: Refer to Part Four, Chapter Three, Personal Baggage, Goods, and Conveyance Examination Policy and Procedures for guidelines pertaining to the examination of personal papers and journals.

41. CBSA officers will not read any correspondence contained in an international courier item, except in certain seizure circumstances. However, if an item has been seized (and only if it has been seized) officers are permitted to scan the correspondence to the minimum amount necessary to determine if further action is required.

Note: The term correspondence does not include invoices, order forms, cheques, newspapers, magazines, books, catalogues, blank forms, manuscripts, or recorded mass storage devices such as tapes, microfilm, or discs.

Photocopying and Electronic Scanning of Personal Papers and Journals

Note: Refer to Part Four, Chapter Three, Personal Baggage, Goods, and Conveyance Examination Policy and Procedures for guidelines pertaining to the photocopying and electronic scanning of personal papers and journals.

Identification Documents

42. Officers in the postal or courier stream may have reason to suspect that identification documents:
 - a) were fraudulently or improperly obtained or used,
 - b) are intended to be used fraudulently or improperly,
 - c) will be used in such a manner as to contravene the purposes of the *Immigration and Refugee Protection Act (IRPA)*; or
 - d) will induce an error in the administration of the *IRPA*.
43. Such suspicion would be generated if for example, there is a Field Operational Support System (FOSS) lookout on the consignee or the name does not match the consignee.
44. When officers have reason to suspect that identification documents should be referred for further investigation, the officer will:
 - a) advise the Regional Intelligence Officer (RIO) who will contact an investigations officer and/or an immigration intelligence officer as required;
 - b) if the documents were hidden, consider seizing them under section 110 of the *Customs Act* using the allegation of non-report but do not release the documents until advised by the RIO;
 - c) if not seized, detain the documents on form K24, Non-Monetary General Receipt, pursuant to section 101 of the *Customs Act* until advised that they are in compliance with the *IRPA*;
 - d) do not forward either a seizure notice or a detention notice prior to RIO approval;
 - e) if it is determined that the documents should be seized, a CBSA officer may:
 - i) seize the documents,
 - ii) provide the original officer (if not the same) with a copy of form IMM 5079, Notice of Mail Seizure Under subsection 140(1) of the

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Immigration and Refugee Protection Act,

- iii) provide the original officer (if not the same) with a copy of form IMM Record of Examination/Seizure of Documents From International Mail and Courier Services, and
- iv) ensure the importer and exporter are advised of the results as per *IRPA* enforcement policy and procedures;
- f) faxing the form to the applicable office (during its business hours) or to the 24/7 office for their region for entry into the FOSS system;

Examination Damages

- 45. Where cameras are available, officers will take photographs before and after examinations when:
 - a) it is likely there will be a complaint as a result of conducting an examination;
 - b) there is pre-existing damage;
 - c) they suspect that damage may be caused during an examination;
 - d) they are going to dismantle or remove permanent fixtures or parts; or
 - e) drill, cut, or break an item to determine if it is concealing goods.
- Note: Photographs taken prior to examination will record any existing damage. Photographs taken after examination will document the extent of the damage caused, if any.
- 46. Examining officers will photograph any accidental damage resulting from an examination.
 - 47. In cases of pre-existing damage or when damage is caused by an examination, officers will record all of the relevant information in their notebooks.
 - 48. When an examination causes damage, officers will prepare a report for the superintendent indicating the nature of the damage (e.g. scraped, broken, crushed, etc.), its extent, and its suspected or actual cause.

Examination Related Costs

- 49. The CBSA may pay for affected items to be brought back to their original state or may make monetary amends when an examination is non-resultant and damage has occurred.

50. The CBSA will not normally pay for damages to personal belongings or conveyances when they are or have been used in contravention of and seized under the *Customs Act*. Goods seized by the CBSA belong to the Crown from the moment of seizure.

Note: The regulations and policy for handling damage claims against the Crown are contained in Chapter Nine, Section Three, Financial Administration Volume, Finance and Administration Manual.

ROLES AND RESPONSIBILITIES

CBSA Officers

51. CBSA officers are responsible for:

- a) adhering to this policy and procedures;
- b) identifying suspect international courier items and processing them in accordance with the CBSA policy and procedures;
- c) taking all necessary precautions against all identified hazards before, during, and after courier examinations;
- d) maintaining in safe and good working order all contraband detection equipment used in examinations;
- e) keeping detailed notes on all unusual or resultant courier examinations; and
- f) keying reports on resultant courier examinations into the Occurrence Reporting System (ORS) for the Regional Intelligence Officer and/or Targeting Unit and advising their superintendent of any enforcement actions. Reports on non-resultant examinations may also be keyed if the officer believes the information should be shared.

CBSA Superintendents

52. CBSA superintendents are responsible for:

- a) ensuring that the policies and procedures related to courier examinations are adhered to by CBSA officers;
- b) guiding and supporting CBSA officers in the performance of their duties;
- c) promoting and monitoring proper examination procedures and compliance with health and safety requirements and correcting any breaches;
- d) ensuring all required health and safety equipment is available;
- e) taking appropriate corrective action on any breaches of this policy; and

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- f) ensuring reports on resultant examinations are keyed into ORS for the Regional Intelligence Officer and/or Targeting Unit and advising officers on which non-resultant examinations are important to share through this reporting system.

Programs Branch

53. The Programs Branch is responsible for:

- a) developing, modifying, and approving all policies and procedures pertaining to international courier examination in accordance with court jurisprudence;
- b) ongoing development and support of examination techniques and tools;
- c) providing guidance to the field pertaining to the tools and instruments used in contraband detection; and
- d) monitoring adherence with this policy by the regions.

PROCEDURES

Note: Refer to Part Four, Chapter Four, Commercial Shipment Examination Policy and Procedures.

REFERENCES

- 54. Customs Act
Finance and Administration Manual
D Memorandums
Courier Imports Remission Order
Courier LVS SOP

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Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 14

COMMERCIAL GOODS EXAMINATION RESULTS RECORDING

17/12/2014

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POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to record timely, complete and comprehensive secondary examination results for all examinations conducted by the CBSA on commercial shipments, whether the examination is resultant or non-resultant.

DEFINITIONS

2. Refer to Part 11 – Glossary.

AUTHORITIES

Customs Act

3. Subsection 13(b) requires persons reporting imported goods to answer truthfully questions respecting the goods, present the goods, unload the conveyance and open and/or unpack any package or container.
4. Subsections 99(1)(a), (b), and (c) authorize officers to conduct examinations anytime up to the time of release of such goods, baggage, conveyances, or mail that are brought into Canada or anytime prior to their export from Canada.
5. Subsections 99(1)(d) and (e) allow officers to examine goods, baggage, or conveyances that have been released but are still in an area under CBSA control if they suspect on reasonable grounds that errors have been made in the declaration, value, or classification of the goods or a contravention has occurred.
6. Subsection 99(1) (f) authorizes officers to stop and board any conveyance, and search the conveyance or any goods it is carrying. The conveyance can be directed to be moved to a CBSA office or other suitable location for search and examination where the officer suspects on reasonable grounds that the Act or any Act of Parliament they administer or enforce has been or might be contravened in respect of the conveyance or the goods.
7. Sections 111 and 112 provide for acquiring and executing a search warrant in order to conduct a customs examination away from a customs area or in places not subject to CBSA control.

PURPOSE AND SCOPE

8. The purpose of this policy is to provide guidelines and expectations to CBSA officers when completing examination results following a commercial examination.
9. This policy applies to all CBSA automated systems as well as manual forms such as A32's and E67's, used by CBSA officers to enter commercial examination results.
10. This policy applies to all CBSA officers conducting examinations of commercial goods.

BACKGROUND

11. One of the key activities of CBSA commercial enforcement is the examination of goods. Under the authority of the *Customs Act*, examinations allow the CBSA to either confirm that goods have been properly reported and accounted for or to intercept goods that do not comply with Canadian laws.
12. Due to limited resources and trade considerations, it is neither possible nor desirable to examine every shipment that is imported or is about to be exported. The CBSA is therefore committed to using its resources to selectively focus enforcement activities on shipments considered to be of greatest potential risk to the Canadian economy and security while at the same time facilitating low-risk commercial goods whenever possible.
13. To meet its objective of protecting the Canadian economy and security, the CBSA is constantly improving its approach to protection activities. This focus includes completing mandatory and random system generated referral examinations to ensure the integrity of the commercial program and unpredictability of referral systems.
14. The CBSA has invested heavily in electronic systems which risk assess advance commercial information based on indicators and information assembled from previous examination results. The electronic risk assessments provide information to support the targeting process. The CBSA commercial targeting process is highly dependent on the quality of examination results which supply information to its risk assessment systems.
15. Referrals and the input of quality examination results play a key role in identifying new trends and patterns and are an important contribution to refining future targeting. Effective use of examination comments is pivotal to ensuring sound and reliable targeting and enforcement measures.

POLICY GUIDELINES

Reasons to Examine

16. Examinations of commercial shipments will be conducted when necessary to:
 - a. Verify or determine that a particular shipment, transporter, importer, or exporter complies with the laws and regulations administered by the CBSA and Other Government Departments (OGDs);
 - b. Ensure that documentation presented to report or account for goods, accurately describes those goods;
 - c. Provide additional information or take samples of goods in order to assist compliance verification in verifying the tariff, value, etc, of the goods after they have been released;
 - d. Follow-through on examinations of identified shipments such as those selected by commercial or enforcement systems or deemed as possibly suspect by a target, random or lookout;
 - e. Confirm or negate officers' suspicions based on indicators of non-compliance; and
 - f. Ensure that the referral reason is recorded and directly addressed when entering examination narratives within CBSA Systems.

Examination Results – General

17. Correctly recorded examination results consist of complete examination narratives that accurately support the appropriately selected discrepancy codes. The recording of examination results is mandatory for all examinations (random, target, selective, OGD, etc), regardless of whether the examination is resultant or not. Examination results must be consistently recorded in the applicable CBSA system(s) for all examinations in all modes and regions, and must only be input when a final determination has been made as to the disposition of the goods. When an OGD referral is deemed necessary, the exam results must only be entered when a release or enforcement action decision has been reached.
18. CBSA officers will take detailed notes during examinations in order to accurately document their observations, actions taken and final results once the examination is completed. Officers are expected to use these notes when entering examination narratives into CBSA systems. For more information on Notebooks and note taking, please refer to the Enforcement Manual Part 8 - Documentation and Reports, Chapter 1 - Notebooks.

19. Examination results must be recorded by the end of the duty shift or as soon as operationally possible after the completion of a commercial examination.
20. CBSA officers are required to ensure complete and accurate reporting and to provide accurate examination results. The Quick Reference Sheet for recording examination results is located in Appendix A of this chapter.
21. To ensure national consistency examination result narratives should be written in full text and not in short hand or using uncommon abbreviations (e.g. GFTB - Goods Found To Be).
22. Ensure that the referral reason is directly addressed and recorded when entering examination narratives within CBSA Systems.
23. When entering examination narratives consider that the information entered is necessary to enable enhanced risk assessment for future trends and patterns in the cargo import and export processes. Correctly recorded examination results will allow the CBSA to meet its commitments and enable OGDs to better define their future examination requests. In addition, the narratives will also allow for the creation of new training and learning products, new targeting scenario's, accurate risk scoring and the validation/creation of new indicators.

ACROSS Examination Narratives

24. Examination narratives must include information such as details pertaining to the referral request and/or target, to enable the CBSA to refine its risk scores, improve its indicators for use by targeting and field officers and allow for examination files to be closed, including those of OGDs.
25. Examination comments should provide an accurate account of the reason and type of examination, amount and type of commodity, specific areas contacted (OGD, Intel, etc), actions taken (detection technology, OGD decisions, enforcement actions, etc), permits/documents presented/reviewed and the actual examination results, including conclusions following all examinations, whether resultant or non-resultant.
26.
 - a. For Food Plant and Animal Goods (FPA), when accessible, it is important to indicate the scientific names of the species determined to be in the

shipment in the examination result comments. If this information is unavailable from the documentation or the importer, then all available information associated with the shipment should be recorded (e.g., common names of species).

27. Examination referrals not conducted must be properly overridden. Superintendent or higher authorization is required to override examinations unless otherwise specified through operational bulletins. Additionally, the reasoning behind examination overrides must be clearly explained by using one of the override justification codes available. Please refer to the ACROSS Quick reference Guide (QRG) 07, section 7, to clarify examination overrides and Quick reference Guide (QRG) 08, section 25, for override codes/reasons.

NOTE: System generated random referrals are mandatory examinations and must be completed unless a situation exists out of CBSA control which would make it necessary to override the examination. In these cases a Superintendent or higher authorization is still required to authorize the override.

28. Examples of “Acceptable” ACROSS examination narratives:
 - a. **Target Acceptable Narrative** - Target verified as requested, full offload conducted database checks completed. Verified the shipper was the subject of the target, however, the commodity was not, 12 pallets of laundry pre-soak enzyme detergent, Intel contacted badge# 12345. Ion Scan and K9 were negative. Goods released.
 - b. **Selective Acceptable Narrative** – Selectively referred examination. Complete offload done and database checks completed. 100% visual inspection performed, three ion scans and opened 10% of boxes. All scans negative. No overage or shortage noted; Goods released.
 - c. **Random Acceptable Narrative** – Goods were randomly selected by ACROSS. Full offload conducted and database checks completed. Eight skids of electrical goods. Performed search of all goods via x-ray and ion scan. Piece count matched invoice supplied. Everything conforms and no discrepancies found. Goods released;
 - d. **OGD Acceptable Narrative** - Shipment of hazardous waste detained and examined to confirm that the hazardous waste on the truck matched that on the permit presented by the importer. Shipment contained used car batteries as declared. The truck displayed the correct dangerous goods

placards. It was not clear if the waste was covered by the permit. Environment Canada (EC) regional office in Downsview, Ontario was contacted. EC officer (Smith N. Badge #12345) confirmed by phone that the used car batteries being imported were allowed under the permit. Goods were released as recommended by EC June 26 at 1430.

- e. **Mandatory Examination Acceptable Narrative** - Mandatory examination for serial number verification. Full offload conducted 108 boxes of firearms and ammunition as described by invoice (value and quantity). Goods were X-rayed, two ion scans performed. Firearms were in 15 boxes which were all opened to verify contents, no anomalies detected, known importer – verified paper work and permits. All information concurs, Goods released; and
 - f. **FPA Acceptable Narrative** - FPA examination to verify CITIES. Partial offload and database checks completed and found previous AMPS penalty for non-report of goods. 20,000 kilograms of frozen conch meat from Honduras; the scientific name was not specified on the invoice; referred to Environment Canada; determined to be Queen conch (*Strombus gigas*); no CITES permit; K26 issued; shipment seized by Environment Canada; Identification Report #12345.
29. The procedure for inputting appropriate examination results within ACROSS can be found in the ACROSS QRG 07, section 5, "Capturing Examination Results".

ACROSS Discrepancy Codes

- 30. Recording narratives and inputting Exam Resultant / Exam Non-Resultant Discrepancy Codes is mandatory for all examinations performed, whether resultant or non-resultant.
- 31. While the examination narrative should address the referral reason, the discrepancy code should directly reflect the end result of the examination, whether it was resultant or non-resultant. Non-resultant codes should be used for all exams unless one of the following actions occur; seizure, AMPS, ascertained forfeiture, or removal/abandonment of goods.
- 32. In cases where multiple Exam Resultant Discrepancy Codes are applicable, the CBSA Officer will be responsible for inputting both of the Exam Resultant Discrepancy Codes that are applicable.

33. The list of applicable Examination Non-Resultant or Resultant Discrepancy Codes can be found in Appendix D of the ACROSS QRG Number 17.

TITAN Examination Comments

34. In addition to all mandatory selection fields, officers are provided with three distinct examination result recording capture fields within TITAN. One of these fields is for inputting examination results; another is for entering information regarding examination tools used during the exam, and the third issued for entering Dog Handler details.

NOTE: These fields allow for 2,032 characters each.

35. Officers are permitted to input examination comments in the Notepad section of TITAN only in situations where the allotted characters of the examination comment section are insufficient for detailed comments.
 - a. Officers required to input comments in Notepad must provide a summary of comments within the examination comments section of TITAN reserved for that purpose;
 - b. CBSA Officers will note the presence of a comment within the Notepad by viewing the colour change of the Notepad icon from white to red;
 - c. Once a note within the Notepad has been created and saved it can **never** be deleted or modified. Appropriate documentation protocols should be followed. All users who have access to the TITAN application can view any note that has been saved. This means there is no restriction on who can view recorded notes;
 - d. Notepad is NOT to be used for Classified, Secret or Top Secret information; and
 - e. In TITAN, notes can be recorded at either the master bill level or the supplemental bill level. The level of the note can be directly related to the action taken. This feature can be used:
 - i. As a communication tool between users;
 - ii. As a method of documenting the reasons for a particular action so users can refer to them later;
 - iii. As a log of actions taken pertaining to a particular cargo / container; and

- iv. As a tool to record additional verifications performed in support of the targeting / examination process.
36. Notepad is not to be used for recording FPA inspection results (wood packaging and soil exams). Examination results comments for wood packaging and soil should be recorded in the 'FPA Compliance Comments' and 'FPA Other Actions Comments' fields only.
37. Examples of "Acceptable" TITAN examination result comments:
- a. **Target Acceptable Comments** – Target 12345 was for company XYZ for contraband. Target confirmed - Full de-stuff conducted of 14 pallets of electronics. Three pallets were missing strapping and were taped differently. No other marking, routing or other unusual findings were identified. Contacted intelligence and advised of finding. The three pallets in question were x-ray which identified a substance within the electronics. Ion Scan and Nic test positive for heroin. Intelligence Badge #1234 & Investigations badge #1234 conducted controlled delivery with responding police agency. ICES Seizure 1234-56-7891 for 30 Kilos of heroin;
 - b. **Selective Acceptable Comments** - Shipment originally referred for VACIS examination, discrepancy found in image, and container referred for a full de-stuff. Full de-stuff and database checks completed. 70 wooden panels from Brazil examined. All packaging consistent and no unusual markings identified. Wooden Panel was drilled which revealed a white substance. Two NIK tests were performed both were positive for Cocaine. Intel and investigations were contacted, no controlled delivery. All information sent to INTEL and Investigations. (*Include name and badge or if referred to INTEL in-box*), ICES Seizure 1234-56-7891;
 - c. **Random Acceptable Comments** – Completed examination of random referral. Full 100% examination conducted of the BMW car motor. Pallet VACIS used for search of the motor. No discrepancy in image, Goods conform to bill of lading, invoice, and advanced commercial information. Goods authorized to move.
 - d. **OGD Acceptable Comments** – Target for contraband, partial offload conducted of consolidated shipment. Nutritional Supplements from Herbal One International, opened 30 boxes and conducted, two NIK tests which were negative for narcotics. Contents sent to Health Canada for analysis. Goods returned and approved by Health Canada – File #456345, Health Canada officer Smith, N. No further actions required by Health Canada. Goods authorized to move.

- e. **FPA Acceptable Comments** – Wood packaging exam. Shipment contained crates of granite slabs. All wood material clean and properly stamped. No evidence of bugs or frass. All wood was debarked. No FPA concerns. Goods authorized to move.
38. The procedure for inputting appropriate examination results within TITAN can be found in the TITAN Air / Marine Quick Reference Guide (QRG) section 8, “Examination”.

TITAN Input Fields

- 39. CBSA officers must directly address the referral reason during their examination process by reviewing the referral or targeting information and negating or confirming the targeting officer’s concerns, while not limiting themselves solely to these indicators.
- 40. Because some types of examinations can be time consuming, officers will record their examination process in their notebooks in order to facilitate the timely future input of examination results. This process will ensure that detailed comments are input without omission and will assist the officer and the CBSA in court proceedings.
- 41. CBSA officers must indicate whether the examination conducted was for FPA, contraband, or any other applicable reasons. If the examination is for FPA select ‘yes’, similarly, if the referred examination was for contraband then indicate by clicking on ‘yes’.
- 42. CBSA officers must complete all relevant fields resulting from the examination of the goods. This includes, detailed “checking off” of container examination process (e.g. Floor or walls drilled, etc), tools used (e.g. X-ray and/ Ion scan, etc), referrals (e.g. OGD and / or FPA, etc) as well as any enforcement information.
- 43. “FPA Compliance” and “FPA Other Action” fields must be completed and the appropriate comments input into the “FPA Compliance Comments” and “FPA Other Action Comments” in order to elaborate on the FPA actions taken and FPA compliance for wood packaging and goods contaminated with soil.
 - a. In the Marine Mode, CBSA officers conducting commercial secondary exams for any reason at the major marine ports, will also check for FPA high risk wood packaging;

- b. If no non-manufactured wood packaging material is present, the CBSA officer should indicate (check) the appropriate field – “manufactured packaging” – and complete the “FPA Compliance Comments” to indicate whether there was no packaging at all or whether manufactured wood packaging (e.g., plywood) or packaging made of materials other than wood (e.g., cardboard, plastic, steel) were present.
- 44. Examples of “acceptable” comments in the TITAN “FPA Compliance Comments” field:
 - a. Standard wood packaging exam, found three skids inside container and one skid was not stamped. No evidence of live pests.
 - b. Pallets were stamped with the International Plant Protection Convention (IPPC) mark. Six live larva and three live ash borer beetle adults found under bark; frass and tunnels plentiful; evidence of heavy infestation.
 - c. All Pallets and dunnage met 100% of FPA requirements and are IPPC Stamped. No live pests found.
 - d. Presence of soil on granite blocks;
 - e. No wood packaging or dunnage. Plastic pallets. Exporter declaration confirmed.
- 45. Examples of “acceptable” comments in the “FPA Other Action Comments” field:
 - a. Fresh frass found, five live ash borer beetle adults found in solid wood packaging. Container & contents refused entry, ordered removed from Canada, removal notice# A056857, notice to treat # 011110, fumigation# A412365, movement cert# P021787.
 - b. Granite blocks ordered cleaned and disinfected. Treatment #011120.

ROLES AND RESPONSIBILITIES

Border Services Officers

- 46. BSOs are responsible for:
 - a. Adhering to this policy and other CBSA policies and procedures including but not limited to the examination of goods while maintaining safe practices under the labour code and following CBSA Standard Operating Procedures (SOPs) for safe examination practices and training;

- b. Completing the examination results section(s) of any manual reporting templates and submitting them to the Superintendent(s) for review or approval in a timely manner;
- c. Inputting comprehensive comments and using the appropriate system codes throughout CBSA systems;
- d. Communicating any questions or concerns regarding this policy to the duty Superintendent;
- e. Accurately and thoroughly completing all required and relevant fields within TITAN, ACROSS and other CBSA systems (e.g. ICES, AMPS);
- f. Accurately and thoroughly completing examination comments within relevant fields in TITAN and/ or ACROSS; and
- g. Ensuring that all completed examinations are finalized by the end of the duty shift.

Regional Management and Superintendents

47. Regional Management and Superintendents are responsible for:
- a. Assuring data quality in conjunction with National Headquarters
 - b. Ensuring that the local and national policies and procedures relative to the examination process of commercial shipments are adhered to at their port;
 - c. Ensure examination referrals are performed and not overridden unnecessarily and those which must be cancelled are properly overridden.
 - d. Ensuring that officers are entering comments as soon as possible after the examination is completed and before the end of their shift;
 - e. Providing training, direction and support to officers;
 - f. Taking appropriate corrective action on policy and procedure breaches;
 - g. Liaising with internal and external partners such as intelligence, investigations, importers, exporters, brokers, transporters, and their representatives;
 - h. Superintendents must share accountability for quality examination result entries through monitoring and program oversight; and

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Commercial Goods Examination Results Recording

- i. Chiefs must share accountability for quality examination result entries through monitoring the program oversight of the Superintendents under their charge.

Programs Branch: Secondary Examination Unit

48. Secondary Examination Unit will be responsible for:

- a. Developing, modifying, and approving all enforcement policies related to the examination of commercial shipments;
- b. Collaborating with Operations Branch to ensure consistent and effective delivery of the program;
- c. Obtaining funding and dedicating resources to assure examination program delivery; and
- d. Monitoring adherence to this policy and procedures by the regions.

Regional Corporate and Programs Services Division (CPSD) Officers

49. Regional CPSD Officers are responsible for:

- a. Providing oversight and operational guidance to regional management and superintendents with respect to performing and recording commercial secondary examination results; and
- b. Addressing specific issues highlighted by Headquarters that are unique to that region and referring any regional concerns that cannot be answered at their level to the program policy Office of Primary Interest.

Operations Branch: Commercial Operations Unit

50. Commercial Operations Unit will be responsible for:

- a. Providing operational guidance to regional management with respect to performing and recording commercial secondary examination results; and
- b. Ensuring national consistency in the recording of commercial secondary examination results.

REFERENCES¹

Customs Act

ACROSS Quick Reference Guide (QRG)

QRG 7 – Overrides
QRG 8 – Override Codes
QRG 17 – Examination Results
QRG 17, Appendix D

TITAN Quick Reference Guide

Air Quick Reference Guide
Examination Results, Chapter 7, paragraph 7.1 & 7.2
Marine Quick Reference Guide
Examination Results, Chapter 8, paragraph 8.1 & 8.2

SOP – Entry Requirements for Wood Packaging

SOP – Inspection of Goods Potentially Contaminated with Soil

Modifications to TITAN exam reporting requirements for wood packaging material and goods contaminated with soil. Operational Bulletin PRG-2012-29

¹ Please note – Links are provided for convenience only. Internet and Intranet links may change often and without notice. The Secondary Examination Unit will make attempts to keep links “live”. Should links no longer be valid, please contact the Secondary Examination Unit of the Commercial Border Programs Division.

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 14

COMMERCIAL GOODS EXAMINATION RESULTS RECORDING

Appendix A

EXAMINATION RESULT RECORDING QUICK REFERENCE SHEET

APPENDIX A

EXAMINATION RESULT RECORDING QUICK REFERENCE SHEET

CBSA officers must ensure to record timely, complete and comprehensive secondary examination results for all examinations conducted on commercial shipments, whether the examination is resultant or non-resultant.

The following acronym “RESULTS” provides a reference to CBSA officers when completing commercial examination results. This learning aid can be printed and referred to as a reminder when entering commercial examination results.

R – Referral Reason (target, OGD, FPA, compliance, random, etc)

E – Examination Type (offload, large scale imaging, etc)

S – Specific Details (amount/type of commodity, scientific names, permits, documents, marking)

U – Unusual Findings (unusual routing, packaging, irregularities)

L – Liaison (communications/contact, e.g. intelligence, investigations, OGD, CID, CITIES)

T – Technology (detection equipment used, database searches)

S – Summary of Action (final results, actions taken)

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Traveller Examination Results Recording

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Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 15

TRAVELLER EXAMINATION RESULTS RECORDING

30/10/14

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to record timely, complete and comprehensive secondary examination results for all referrals conducted by the CBSA on travellers, goods, and conveyances whether the examination is resultant or non-resultant or the referral is withdrawn prior to secondary or not.
2. This chapter was undertaken in the larger context of an Agency-wide effort to capture traveller examination results. As such, this policy applies to CBSA officers working in all modes of travel where systematic capability to input examination results exists.

DEFINITIONS

3. Refer to Part 11 – Glossary.

AUTHORITIES

Customs Act

4. Paragraph 13(b) – requires persons reporting imported goods to answer truthfully questions respecting the goods, present the goods, unload the conveyance and open and/or unpack any package or container.
5. Paragraphs 99(1)(a), (b), and (c) authorize officers to conduct examinations anytime up to the time of release of such goods, baggage, conveyances, or mail that are brought into Canada or any time prior to their export from Canada..
5. Paragraphs 99(1)(d) and (e) allow officers to examine goods, baggage, or conveyances that have been released but are still in an area under CBSA control if they suspect on reasonable grounds that errors have been made in the declaration, value, or classification of the goods or a contravention has occurred.
6. Paragraph 99(1) (f) authorizes officers to stop and board any conveyance, and search the conveyance or any goods it is carrying. The conveyance can be directed to be moved to a CBSA office or other suitable location for search and examination where the officer suspects on reasonable grounds that the Act or any Act of Parliament they administer or enforce has been or might be contravened in respect of the conveyance or the goods.

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Traveller Examination Results Recording

7. Sections 111 and 112 provide for acquiring and executing a search warrant in order to conduct a customs examination away from a customs area or in places not subject to CBSA control.

Immigration Refugee and Protection Act

8. Paragraph 18(1) – requires that every person seeking to enter Canada must appear for an examination to determine whether that person has a right to enter Canada or is or may become authorized to enter and remain in Canada.

PURPOSE AND SCOPE

9. The purpose of this policy is to provide guidelines and expectations to BSOs when completing examination results for all referrals in the air mode.
10. This policy applies for all referrals made by CBSA officers working primary, point, secondary or while roving. This also applies to referrals made by CBSA automated systems such as the Automated Border Clearance (ABC) and NEXUS kiosks.

Background

11. The 2007 Office of the Auditor General of Canada audit report - *Keeping the Borders Open and Secure*, identified that the Agency does not record the results of all secondary examinations. Nor does it have an effective system to randomly select goods and people for further examination and use the results to validate or improve its targeting and examination strategies.
12. Detailed examination results and reports are vital to performance measurement, reporting and resource allocation and overall quality of referrals and targets. Without this information, the Agency cannot determine whether it is appropriately matching levels of examination activity to levels of risk.
13. Recording examination results will allow the Agency to assess program effectiveness by analyzing officer referrals versus the baseline set through the collection of valid and statistically sound random referral data.
14. Closing the Loop is intended to ensure that detailed examination results for all referrals are being captured and that 100% of referrals are being acquitted in the system.

Examination Comments – General

15. The recording of examination results is mandatory for all referrals regardless of whether the examination is resultant or not.
16. Non-examinations, including those released by a point officer, are to be recorded in the Integrated Customs System (ICS) Secondary Processing (SP) application following proper acquittal procedures set out in this chapter and notated as “not examined” with the reasons for non-examination included in the “Add Note” section.
17. The ICS/SP application enables the CBSA to record secondary examination results. It is essential that all actions taken during secondary examinations be initiated, recorded and properly acquitted.
18. All referrals made to secondary other than from Primary (i.e. Roving, Point, cash function, etc.) will not be reflected in the Secondary Referral List in ICS-SP. As a result, officers must add a secondary referral by creating an entry through the use of the ICS-SP passage history application.
19. Examination results and the acquittal of the “in-progress” referrals in the ICS-SP application must be completed as soon as operationally possible and **not to exceed 24 hours** after the completion of an examination.
20. To maintain the integrity of the program, all examination results must be input by the Border Services Officer (BSO) conducting the examination. In cases where the referral was released at point and no examination was conducted, the referral may be acquitted by another officer.
21. To ensure national consistency examination result comments should be written in full text and not in short-hand or using uncommon abbreviations.
22. Ensure that the referral reason is directly addressed and recorded when entering examination results within CBSA Systems.
23. Ensure the appropriate drop-down menus are used when an examination is resultant. The “Add Note” field can be used to record any additional information or indicators that are relevant to the exam.
24. Follow the targeting policy by intercepting and examining the people, goods or conveyances that have been targeted and enter detailed exam results into the appropriate system as soon as operationally possible, once the secondary examination has been completed; (For more information on the targeting policy refer to the CBSA EN Manual [Part 3, Chapter 1](#)).
25. Follow the [lookout policy](#) and acquit all lookout interceptions via the Integrated Customs Enforcement System (ICES) examination results.

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26. In exceptional cases, (i.e. medical emergency) the BSO shall create a secondary referral by querying ICS-SP passage history application. Upon conclusion of the case, return to the open secondary referral report, add relevant details and save as complete. The referral must be acquitted within 14 days otherwise the referral will be automatically closed by the system and not acquitted.

ACQUITTAL OF VERIFICATION REFERRALS IN THE TELEPHONE REPORTING CENTRE SYSTEM (TRCS)

27. BSOs must acquit all pending verifications in the TRCS in a timely manner. There is a limited time window of 30 days for TRC or verification officers to enter verification results into the system. Depending on the individual verification offices, and access to the TRCS, this function can be performed by either the verification officers, or the examination details are faxed to the TRC centre for input by TRC officers.
28. For details on TRCS verification acquittal procedures please refer to [Appendix F1](#) of the Standard Operating Procedures of the Telephone Reporting Centre.

ROLES AND RESPONSIBILITIES

Border Services Officers (BSO)

29. BSOs working primary are responsible for:
 - a) adhering to all reporting, questioning, and referral policies and procedures; and
 - b) ensuring that details of the reason for the referrals are entered through the use of the Integrated Primary Inspection Line (IPIL Air), enabling the secondary BSOs to focus the examination accordingly. This is accomplished by selecting F12 or select on the Referral Decision Tab and then choosing a referral decision by selecting the F1 key for customs, selecting the F5 key for immigration and F11 for cash.
30. BSOs working secondary are responsible for:
 - a) identifying the person referred and view the reasons for referral through the use of the ICS-SP application;
 - b) completing the "Was an examination performed?" field in ICS-SP application by indicating "yes/no";

- c) recording any additional information or indicators that are relevant to the exam in the "Add Note" section including specific examination details pertaining to the referral request;
- d) ensuring that when conducting a secondary immigration examination the *Processing Immigration Secondary* section of ICS-SP be selected to indicate what documents were issued to a traveller and the immigration enforcement or facilitation action that was taken;
- e) ensuring that when performing a cash function, the *Processing Cash – Mandatory* section of ICS-SP be selected; and
- f) ensuring that when conducting a secondary customs examination, the *Processing Customs Secondary* section of ICS-SP shall be selected to indicate one of the four drop down resultant action types (Enforcement Action, Intelligence Action, Non-Enforcement Action and Pending Action).

CBSA Port of Entry Chiefs and Superintendents

31. CBSA Port of Entry Chiefs and Superintendents are responsible for:

- a) ensuring that officers enter details of the reason for the referrals through the use of IPIL Air;
- b) monitoring the Secondary Referral List in ICS-SP to ensure that all referrals are accounted for;
- c) ensuring that BSOs resume any "in-progress" examinations, add appropriate details and mark as complete;
- d) ensuring that any on-going examination is transferred to another BSO through the use of the ICS-SP application prior to the completion of their shift;
- e) ensuring detailed examination results are entered;
- f) ensuring the referral is properly acquitted upon the completion of the examination in the ICS-SP system confirming BSOs are following the above guidelines;
- g) providing direction and support to BSOs; and

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- h) taking the necessary measures to ensure the above steps are taken and the appropriate level of oversight is provided.

Programs Branch

32. The Programs Branch is responsible for:

- a) developing, modifying, and approving all policies related to traveller examinations results recording; and
- b) providing guidance to regional managers and superintendents.

REFERENCES

33. *Customs Act*
Immigration Refugee and Protection Act

CUSTOMS ENFORCEMENT MANUAL

Part 5

ENFORCEMENT ACTIONS – GOODS, DOCUMENTS, EVIDENCE, AND CONVEYANCES

Chapter 1

COMMERCIAL SEIZURES, ASCERTAINED FORFEITURES, AND ADMINISTRATIVE MONETARY PENALTIES

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POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to use the Administrative Monetary Penalty System (AMPS) as its main enforcement tool in addition to seizure and ascertained forfeiture in certain circumstances and for certain commodities.

DEFINITIONS

2. Refer to Part 11 - Glossary.

AUTHORITIES

Customs Act

3. Section 7.1 – States that any information provided to an officer in the administration or enforcement of this Act, the *Customs Tariff* or the *Special Imports Measures Act* or under any other Act of Parliament that prohibits, controls, or regulates the importation or exportation of goods must be true, accurate, and complete.
4. Subsection 12(1) – States that all goods that are imported must be reported at the nearest CBSA office except under certain circumstances or subject to prescribed conditions.
5. Paragraph 12(3)(a.1) – States that the goods imported by courier or as mail must be reported by the person who exported the goods to Canada.
6. Section 13 – States that every person who reports goods under section 12 or is stopped by an officer under section 99.1 must:
 - a) answer truthfully questions asked by the officer respecting the goods; and
 - b) if requested by an officer, present the goods and make them ready for examination.
7. Section 15 – Requires persons who have or find in their possession goods that have been imported and believes on reasonable grounds are prohibited, controlled, or regulated and have not been lawfully imported or the duties owing on the goods have not been paid must report the goods to an officer.
8. Subsection 32(1) – States that every importer is legally liable to fully account for goods being imported and, except under prescribed or regulated

conditions, to pay the duties lawfully payable prior to the release of the goods.

9. Section 95 – States that all goods that are exported must be reported at the time and place of exportation.
10. Subsections 97.25(1) and (2) – States that goods reported for exportation under section 95 or imported on behalf of a debtor and conveyances used in the importation of goods that are the subject of a notice served under section 109.3:
 - a) are subject to a lien for the amount owed by the debtor; and
 - b) may be detained by an officer at the expense of the debtor or the person on whom the notice (109.3) was served until the total amount is paid.
11. Subsections 97.25(3) and (4) – Authorizes the Minister, after thirty days notice to the debtor at their last known address, to direct the sale of imported goods, goods reported for export, or conveyances that have been detained. The section authorizes the Minister to apply any proceeds to amounts owed by the debtor, expenses incurred by the Government of Canada, and duties and taxes owing, and remit any surplus to the debtor.
12. Subsection 109.1(1) – Every person who fails to comply with any provision of an Act or a regulation designated by the regulations made under subsection (3) is liable to a penalty of not more than twenty-five thousand dollars, as the Minister may direct.
13. Subsection 109.1(2) – Every person who fails to comply with any term or condition of a license issued under this Act or the Customs Tariff or any obligation undertaken under section 4.1 is liable to a penalty of not more than twenty-five thousand dollars, as the Minister may direct.
14. Subsection 109.1(3) – The Governor in Council may make regulations:
 - a) designating any provisions of this Act, the *Customs Tariff*, or the *Special Import Measures Act* or of any regulation made under any of those Acts; and
 - b) establishing short-form descriptions of the provisions designated under paragraph (a) and providing for the use of those descriptions.
15. Subsection 109.2(1) – In this section, “designated goods” includes firearms, weapons, ammunition, and any other goods classified under chapter 93 of the List of Tariff Provisions set out in the schedule to the Customs Tariff or under tariff item No. 9898.00.00 of that List.

16. Subsection 109.2(2) – Every person is liable to a penalty equal to double the total of the duties that would be payable on like tobacco products or designated goods released in like condition at the rates of duties applicable to like tobacco products or designated goods at the time the penalty is assessed, or to such lesser amount as the Minister may direct, if the person:
 - a) removes tobacco products or designated goods or causes tobacco products or designated goods to be removed from a CBSA office, sufferance warehouse, bonded warehouse, or duty free shop in contravention of this Act or the *Customs Tariff* or the regulations made under those Acts, or
 - b) sells or uses tobacco products or designated goods designated as ships' stores in contravention of this Act or the *Customs Tariff* or the regulations made under those Acts,
17. Subsection 109.3(1) – A penalty to which a person is liable under sections 109.1, or 109.2 may be assessed by an officer and, if an assessment is made, an officer shall serve on the person a written notice of that assessment by sending it by registered or certified mail or delivering it to the person.
18. Subsection 109.3(2) – A person shall not be assessed penalties under both sections 109.1 and 109.2, in respect of the same contravention of this Act, or the *Customs Tariff* or the regulations made under those Acts.
19. Subsection 109.3(3) – An assessment under subsection (1) may be made in addition to a seizure under this Act or a demand for payment under section 124, in respect of the same contravention of this Act or the regulations.
20. Section 109.4 – A penalty assessed against a person under section 109.3 shall become payable on the day the notice of assessment of the penalty is served on the person.
21. Section 109.5 – Subject to subsection (2), a person on whom a notice of assessment of a penalty has been served under section 109.3 shall pay, in addition to the penalty, interest at the prescribed rate for the period beginning on the day after the notice was served on the person and ending on the day the penalty has been paid in full, calculated on the outstanding balance of the penalty. Subsection (2) stipulates that interest is not payable if the person pays the penalty in full within thirty days after the date of the notice of assessment.

22. Subsection 110(1) – Authorizes officers that have reasonable grounds to believe that this Act or its regulations have been contravened with regard to goods, to seize without terms of release:
 - a) goods; or
 - b) any conveyance they have reasonable grounds to believe was used in respect of the goods either at or after the time of the contravention.
23. Subsection 110(2) – Authorizes officers to seize as forfeit conveyances when they have reasonable grounds to believe that this Act or its' regulations have been contravened respecting the conveyance or regarding persons transported by the conveyance.
24. Subsection 110(3) – Authorizes officers to seize anything that they believe on reasonable grounds is evidence of a contravention when they believe on reasonable grounds that this Act or its' regulations have been contravened.
25. Subsection 110(4) – States that officers who seize goods or a conveyance as forfeit under subsections (1) or (2) must take reasonable measures to give notice of the seizure to any person they believe on reasonable grounds is entitled to make application under section 138 regarding the goods or conveyance.
26. Sections 117, 118, and 119 – Authorize border services officers to release any seized goods, conveyances, or perishables to the person from whom they were seized or to a person they authorize, on receipt of a sum of money equal to the value of the goods plus the duties and taxes where applicable or such lesser amount as the Minister may direct. Spirits, wine, specially denatured alcohol, raw leaf tobacco or tobacco products shall not be returned to the person from whom they were seized or any other person unless they were seized in error.
27. Section 124 – Provides the authority to effect ascertained forfeitures in respect of goods or conveyances when the goods or conveyance is not found or if the seizure thereof would be impractical.
28. Section 138 – States that when goods or a conveyance is seized as forfeit under this Act or a conveyance is detained under subsection 97.25(2), any person, other than the person who was in possession of the conveyance at the time it was seized or detained, who claims a third party interest in the conveyance has ninety days after the seizure or detention to apply for a decision under section 139.
29. *Designated Provisions (Customs) Regulations* – These describe contraventions that attract penalties under the AMPS.

BACKGROUND

30. On October 7, 2002, the Administrative Monetary Penalty System (AMPS) became effective and authorizes border services officers to assess monetary penalties for contraventions of the *Customs Act*, *Customs Tariff*, and the regulations pursuant to these Acts.
31. The purpose of the AMPS is to provide border services officers with a means to deter non-compliance by its clients and to assist them in meeting their obligation to comply with Canada's trade, tax, and border legislation.
32. AMPS imposes monetary penalties in proportion to the type, frequency, and severity of the infraction. Most penalties are graduated, increase in amount with repetitive non-compliance and also take the contravention history of the client into consideration. Penalties under AMPS are applied against the business as opposed to seizures, which are applied against goods.
33. AMPS replaces the need for most commercial seizures and ascertained forfeitures. These two enforcement actions are applied for certain contraventions when they involve specified goods. In addition, criminal prosecution procedures continue to be undertaken where warranted due to the seriousness of an offence or the potential for harm to society.
34. AMPS applies to contraventions involving commercial traders and service providers including importers, exporters, brokers, warehouse and duty free shop operators, carriers, and freight forwarders. Contraventions involving travellers with "casual" or non-commercial goods continue to be subject to travellers' seizure and ascertained forfeiture enforcement actions.

PURPOSE AND SCOPE

35. The purpose of this policy is to outline the guidelines to be followed when dealing with commercial seizures and ascertained forfeitures and how they relate to AMPS contraventions as reflected in the Presidential Directive under Appendix "A".
36. This policy applies to all employees of the CBSA who are responsible for the administration and enforcement of the *Customs Act*, *Customs Tariff*, and the regulations pursuant to these Acts.

POLICY GUIDELINES

Note: Refer to the Master Penalty Document for contraventions pertaining to the application of AMPS at the following website.

<http://cbsa-asfc.gc.ca/trade-commerce/amps/mpd-dmi-eng.html>

Note: Refer to the AMPS Reference Manual for guidelines pertaining to the application of AMPS at the following website.

Note: Refer to Part 5, Chapter 2, Travellers' Seizure and Ascertained Forfeiture Policy and Procedures for guidelines for dealing with contraventions involving travellers with "casual" or non-commercial goods.

Seizure or Ascertained Forfeiture of Specified Goods in addition to AMPS

37. In addition to any penalty issued under the AMPS in respect of contraventions C021, C025, C031, C033, C066, C069, C345, C346, C348, C359, C360, C366 and C372 listed in the regulations made pursuant to subsection 109.1(1) of the Customs Act, border services officers will seize the following specified goods and hold them with no terms of release:
 - a) alcohol, including ethyl alcohol, spirits, beer, malt liquors, and wine;
 - b) tobacco and all tobacco products;
 - c) prohibited weapons, devices, munitions, parts, and components set out in 9898.00.00;
 - d) firearms;
 - e) drugs and substances as set out in the *Controlled Drugs and Substances Act*;
 - f) child pornography;
 - g) conveyances that have been specifically modified or manufactured and used for smuggling purposes; and
 - h) controlled goods whose export would pose a security risk.
38. In cases where specified goods are not available for seizure and would have been seized were they available, officers will apply an ascertained forfeiture in addition to any AMP applied.
39. The penalty under the AMPS will be applied in accordance with the penalty amount as set in the Master Penalty Document.

Seizure or Ascertained Forfeiture in Lieu of AMPS

40. Where commercial goods accompany a person who is a non-resident arriving in Canada and when it cannot be established that the person who committed the contravention is in possession of a Business Number, goods may be seized pursuant to subsection 110(1) of the Act. The seizure will be with terms of release equal to the amount of the AMPS penalty. This procedure allows CBSA to immediately recover the penalty amount. Canada Revenue Agency (CRA) Collections has no jurisdiction outside Canada, in cases of default of payment of penalties.
41. Courier Low Value Shipment (CLVS) Program: In circumstances where physical evidence has been discovered during an examination indicating that the exporter of the goods has provided an untrue value for the release of the shipment, and that the undervaluation is significant, an action in respect of the goods may be taken under subsection 110(1) of the Act. The action shall be taken under the exporter's name, as it is the entity responsible for providing true and accurate information under section 7.1 of the Customs Act. The amounts indicated in Section 1 of Appendix A shall apply to the return of the goods.

Note: Refer to Part 4, Chapter 13, Courier Examination Policy and Procedures for specific information relating to significant undervaluations in the CLVS Programs.

Seizure and Ascertained Forfeiture Documents and Allegations

42. Seizures of specified goods will be captured in the Integrated Customs Enforcement System (ICES) or for non-automated customs offices a Customs Seizure Receipt (K19s) must be completed manually and forwarded to an automated office for input into ICES.

Note: Refer to ICES User Reference Manual, Chapter Eight, Commercial Commodity.

43. Where regular commercial goods are seized and terms of release are offered, officers will capture the commercial seizure in ICES - **Recovery** mode.

Issuing Officer Reports

44. Reports should deal with the specifics and not contain any personal comments. Under no circumstances will border services officers contact Recourse Directorate for assistance in the decision-making process leading to seizure action.

45. Officers will use the following generic allegation when issuing a K19s:

"The goods listed below / on the attached statement are seized under paragraph 110(1)(a) of the *Customs Act* in respect of a contravention of (list section number) of the (list Act or regulation); and the conveyance listed below / on the attached statement is seized under paragraph 110(1)(a) of the *Customs Act* because it was modified or used for smuggling."

46. Officers will document ascertained forfeitures on a Notice of Ascertained Forfeiture (K9).

Assessment and Collection of Duties and Taxes

47. Officers will collect duties and taxes separate from the penalty amount required for the return of seized goods or as the penalty payment.
48. Officers will not collect duties and taxes on specified goods that have been seized and held as forfeit
49. Officers will assess duties and taxes against other goods when an ascertained forfeiture has been issued because the goods have already entered the country and are not available for seizure.

Detention

50. Goods may not be detained pending payment of an AMPS penalty. Recipients have 30 days in which to pay these penalties.
51. If Collections has determined that the person reporting the goods is a debtor to the Crown, the goods may be detained under section 97.25 of the *Customs Act* until the amount previously owed is paid.

Liaison with Regional Investigations

52. Officers will refer matters meeting the criteria for prosecution to Investigations for further action.

Note: Refer to Part Nine, Chapters One and Two, Customs Prosecution Policy and Customs Prosecution Procedures.

53. Officers may seize goods as evidence under the authority of subsection 110(3) of the *Customs Act*.
54. An investigator will provide guidance regarding what evidence to seize. Investigators will follow the guidelines stipulated in the Programs Branch policy regarding the seizure of goods.

55. Officers will document seizure actions where goods are seized as evidence on an Evidence Seizure Receipt (E352).
56. When a situation involving unlawfully imported or exported goods are encountered beyond a CBSA point of entry, the Investigations Division/RCMP will normally issue a penalty under the AMPS. However, Investigations/RCMP may use seizure action when the physical control of the goods is required.

Release of Goods Subject to Enforcement Action

57. Border services officers must ensure that goods comply with all federal and provincial legislation for which the CBSA has responsibility.

Release Conditional on Exportation

58. Officers will consider requests for export of seized goods offered for release on a case-by-case basis.
59. Officers will not allow the export of seized goods offered for release in instances where they have reasonable grounds to believe that the goods will be re-introduced into Canada in an unlawful manner.
60. Export of goods seized and offered for release must be carried out under customs supervision, either by physical escort by customs to the point of exit from Canada or through completed and certified export transportation documents. A penalty under the AMPS is still issuable and payable.

Note: Include copies of export documents in the appropriate seizure files.

Third Party Notification

61. The officer seizing goods or conveyances will, at the time of the seizure, take positive steps to determine if there are or could be third parties (e.g. rental car owners) involved.
62. Where it is determined that the person from whom the goods or conveyances are seized is not the actual owner of the goods, or it is apparent that there is an outstanding lien against the goods (this may be indicated on a sales receipt, or an insurance or registration slip), the owner, mortgage, or lien-holder must be notified that the goods are under seizure and that they may make application under section 138 of the *Customs Act*.
63. Notification under subsection 110(4) to the owner, mortgage, or lien-holder will be in the form of a completed Notice of Seizure (K138).

Note: Circumstances of the actual seizure are confidential between the CBSA and the person from whom the goods or conveyance was seized and should not be quoted in the notification.

64. A copy of each form K138 sent must be forwarded immediately to the Adjudications Division.

Appraisal

Note: Refer to Part Two, Chapter Five, Jewellery and Watches for guidelines on jewellery appraisal.

65. When assessing a penalty on goods which require an appraisal, officers will exercise care to calculate a value for duty that is fair and equitable, bearing in mind the circumstances of the case and the condition of the goods involved.

Correction Procedures (commercial seizures, traveller seizures, ascertained forfeitures and AMPS)

Note: See Chapters 7 and 8 of the AMPS Reference Manual for policy and procedures for correcting enforcement actions.

66. Subsection 127.1 (1) of the *Customs Act*, allows the Minister to cancel a seizure, or cancel or reduce an ascertained forfeiture or AMPS penalty within 90 days of the seizure, penalty or the demand for payment if there was no contravention or if there was an error with respect to the amount assessed, collected or demanded. The authorities of the Minister for this section have been delegated to the regional management of the CBSA (Superintendent, Chief, and Manager).
67. The following procedures apply only to seizures under the *Customs Act* and not to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, or to Administrative Monetary Penalty System infractions (AMPS).
68. A correction may be initiated within 90 days by either regional management or at the request of a client. Client initiated requests must be made to the issuing office. If the request is made anywhere else, it must be forwarded to the issuing office.
69. The issuing office must inventory a client request and the final dispensation of all reviews (maintained, amended, cancelled, transferred) for audit purposes in ICS.

70. An enforcement action may be cancelled when it is evident that:
 - a) it was applied to the wrong client;
 - b) there was no contravention;
 - c) it was issued with an error in the amount calculated.
71. Subsection 127.1(1) of the *Customs Act* does not authorize the reduction of a seizure, but a seizure may be cancelled and a new one issued when it is simply a matter of a calculation error or the wrong client.
72. The Contraband Intelligence Unit, Programs Branch, will ensure that the seizure is cancelled in the Integrated Customs Enforcement System (ICES).
73. Section 127.1(1) of the *Customs Act* authorizes a designated officer to cancel or amend a penalty under the AMPS or an ascertained forfeiture in a lesser amount.

Requests transferred to the Recourse Directorate

74. A request must be transferred to the Recourse Directorate if:
 - a) it is determined that a contravention has occurred;
 - b) it cannot be processed within 90 days from the date of issuance;
 - c) there are aggravating or mitigating circumstances that should be taken into consideration;
 - d) the correction request was received from a 3rd or other 1st party (not the party identified on the seizure/ascertained forfeiture, nor his agent or representative).

Appeal Procedures

75. Subsection 129. (1) of the *Customs Act* allows a person to submit a written notice of appeal of a penalty under the AMPS, seizure or ascertained forfeiture within 90 days of issuance.
76. Officers will accept late claims, acknowledge receipt and forward the late claims to Recourse for their consideration and action.
77. When a claim is in respect of goods that have been disposed of for any reason, Recourse must be notified immediately.

78. Officers, superintendents, and managers must ensure that the following is sent to Recourse as soon as possible:
- a) original redress request(s);
 - b) copies of acknowledgements letter(s) to client;
 - c) comments of officers involved concerning all the points raised in the request(s);
 - d) other comments superintendents or managers may deem appropriate;
 - e) originals of any correspondence received regarding the enforcement action.
 - f) copies of any letters of criticism, including complaints against officers dealing with the penalty action;
 - g) reports resulting from the investigation of complaints; and
 - h) anything that may appear to be a claim from a lien-holder or third party interest pursuant to section 138 of the *Customs Act*.
79. Cases will be held open until the seizing/assessing customs office is notified of a ministerial decision and, where applicable, subsequent instructions are issued by Recourse concerning disposition of any goods remaining on hand.
80. Where an appeal is filed or a case is being held open for further investigation or other reasons, disposition of goods remaining on hand and the closing of cases must be withheld pending notification (i.e., third party orders, Federal Court Appeals).
- Note: From the time an appeal and/or third party claim is received, the case becomes the responsibility of Customs Appeals under the procedure set out in sections 129 to 141 of the *Customs Act*.
81. Officers have an active role in the adjudications process. By supplying additional comments and evidence, when requested by the adjudicator or when the officer believes it is required, the officer contributes to the quality of the decision. It is imperative that officers review all submissions made by the public and all correspondence sent out by Recourse to better understand how to document future enforcement actions.

82. Refer to the Redress chapter of the AMPS Reference Manual for further details on how to process a request for redress.

REFERENCES

83. Customs Act
Memorandum D22-1-1
About AMPS
AMPS Reference Manual
ICES User Reference Manual

EN Part 5, Chapter 1

COMMERCIAL SEIZURES,
ASCERTAINED FORFEITURES, AND AMPS

Part 5

ENFORCEMENT ACTIONS – GOODS, DOCUMENTS, EVIDENCE, AND CONVEYANCES

Chapter 1

COMMERCIAL SEIZURES, ASCERTAINED FORFEITURES, AND ADMINISTRATIVE MONETARY PENALTIES

Appendix A

PRESIDENTIAL DIRECTIVE FOR THE SEIZURE AND ASCERTAINED FORFEITURE OF COMMERCIAL GOODS AND CONVEYANCES

Presidential Directive for the Seizure and Ascertained Forfeiture of Commercial Goods and Conveyances

The schedule of terms of release for seized goods or as a demand under paragraph 124(1)(b) of the *Customs Act* is found in Section 1.

Pursuant to subparagraph 117(1)(a)(ii) and subsection 119.1(1) of the *Customs Act*, and to the Delegation Instrument signed by the President of the Canada Border Services Agency, in which the powers of the President in respect of the above-noted statutory authorities have been delegated to me, I hereby direct that, in respect of commercial contraventions, established in accordance with the Regulations made under section 109.1 of the *Customs Act*, the amounts of money indicated in the schedule outlined in Appendix A - Section 1 will be required for the return of goods that are seized under authority of subsection 110(1) of the *Act* for a contravention of section 7.1, 12, 13, 15, 95 or 96 of the *Act*.

Pursuant to paragraph 124(1)(b) of the *Customs Act*, and to the Delegation Instrument signed by the President of the Canada Border Services Agency, in which the power of the President in respect of the aforementioned authority has been delegated to me, I hereby direct that, in respect of commercial contraventions established in accordance with the Regulations made under section 109.1 of the *Customs Act*, the amounts of money indicated in the schedule outlined in Appendix A - Section 1 will be demanded under authority of section 124 of the *Act* for a contravention of section 7.1, 12, 13, 15, 95 or 96 of the *Act*.

The criteria outlined in Section 2 to this Directive will limit the circumstances and conditions for the initiation of an action under subsection 110(1) or (2) or paragraph 124(1)(b) of the *Customs Act* in respect of commercial goods and conveyances.

This directive becomes effective as of the date of signature.

Original signed by _____

Richard Wex
Vice-President
Programs Branch

2014-08-14 _____

Date

Section 1

Schedule of Amounts of Money for the Return of Seized Goods or as a Demand
under Paragraph 124(1)(b) of the Customs Act:

Contravention	First Contravention	Second Contravention	Third and Subsequent Contraventions
Non-report in respect of imports (s.12)	20% of the value for duty.	40% of the value for duty.	60% of the value for duty.
Untrue statements in respect of imports (s.13)	20% of the value for duty.	40% of the value for duty.	60% of the value for duty.
Possession of illegally imported goods (s. 15)	20% of the value for duty.	40% of the value for duty.	60% of the value for duty.
Non-report in respect of exports of goods subject to export control (s.95 & 96)	20% of the value of the goods.	40% of the value of the goods.	60% of the value of the goods.
Untrue statements in respect of export of goods subject to export control (s.95)	20% of the value of the goods.	40% of the value of the goods.	60% of the value of the goods.
False information in respect of imports or exports (s. 7.1)	20% of the value for duty (imports) or the value of the goods (exports).	40% of the value for duty (imports) or the value of the goods (exports).	60% of the value for duty (imports) or the value of the goods (exports).
Failure to report goods at time of release (interim accounting) (s.7.1)	20% of the value for duty.	40% of the value for duty.	60% of the value for duty.
Significant untrue value in respect of goods imported via the Courier LVS Program (s. 7.1)	20% of the undervalued portion	40% of the undervalued portion	60% of the undervalued portion

Section 2

Criteria for Initiation of an Action under Subsection 110(1) or (2) or for making a demand under Paragraph 124(1)(b) of the *Customs Act*

A. Goods to be seized as forfeit in addition to an Administrative Monetary Penalty

In addition to any Administrative Monetary Penalty issued specifically in respect of contraventions C021, C025, C031, C033, C066, C069, C345, C346, C348, C359, C360, C366 and C372 the following goods are to be seized as forfeit:

- Alcohol including ethyl alcohol, spirits, beer, malt liquors and wine;
- Tobacco and all tobacco products;
- Prohibited weapons, munitions, devices, parts or components as set out under tariff item 9898.00.00;
- Firearms;
- Drugs and substances as defined in the *Controlled Drugs and Substances Act*;
- Child Pornography;
- Conveyances that have been modified and used for smuggling;
- Controlled goods whose export would pose a security risk.

The AMPS penalty will be applied in accordance with the penalty amount as set in the Master Penalty Document.

Where the goods mentioned above are not available for seizure, in addition to any Administrative Monetary Penalty issued in respect thereof, a demand under paragraph 124(1)(a) of the *Customs Act* may be made for an amount of money equal to the value for duty of the goods at import or the value of the goods at export as the case may be.

B. Seizure or Ascertained Forfeiture in lieu of an Administrative Monetary Penalty

(1) Only the Investigations Division and the members of the RCMP may use seizure action in the circumstance that follows. Regardless of the AMPS amount, when the physical control of the goods is required; the goods may be seized pursuant to subsection 110(1) of the *Act*. The amounts indicated in Appendix A – Section 1 shall apply for the return of the goods.

(2). Where commercial goods accompany a person who is a non-resident arriving in Canada and when it cannot be established that the person who committed the contravention is in possession of a Business Number, goods may

be seized pursuant to subsection 110(1) of the Act. The seizure will be with terms of release equal to the amount of the AMPS penalty.

C. Seizure for Significant Untrue Values Discovered in the Courier Low Value Shipment (CLVS) Program

(1) In circumstances where physical evidence has been discovered during an examination indicating that the exporter of the goods has provided an untrue value for the release of the shipment, and that the undervaluation is significant, a seizure action in respect of the goods may be taken under subsection 110(1) of the *Act*. The action shall be taken under the exporter's name, as it is the entity that is responsible for providing true and accurate information under section 7.1 of the *Customs Act*. The amounts indicated in Section 1 of this Appendix shall apply to the return of the goods.

(2) As the action is taken under the exporter's name, the Canadian importer must be notified through a Third-Party Notification.

(3) The Standard Operating Procedures (SOP) of the Courier LVS Program and Part 4 Chapter 13 of the Enforcement Manual provide more specific information.

D. Conveyances

Conveyances used in the unlawful importation, exportation or transportation of goods shall not be seized unless the conveyance has been specifically modified or manufactured for smuggling purposes. Conveyances that have been specifically modified or manufactured with the addition of false or hidden compartments and used in the unlawful importation, exportation or transportation of goods, may be subject to seizure under subsection 110(1) or ascertained forfeiture under section 124 of the *Customs Act*. When a specifically modified or manufactured conveyance is seized, it will be held as forfeit and no return is authorized. This applies in addition to any other enforcement action.

E. Seizure of Goods as Evidence

Whenever the criteria for prosecution in accordance with the Agency's guidelines for the initiation of prosecutions under the *Customs Act* are met, in addition to an Administrative Monetary Penalty, officers are authorized to seize the goods under authority of subsection 110(3) of the *Act* as evidence of an offence.

F. Separate Collection of Duty and Taxes

When goods are seized under authority of subsection 110(1) of the *Customs Act* for a contravention of section 7.1, 12, 13, 15, 95 or 96 of the *Act*, or, if a demand is made under authority of paragraph 124(1)(b) of the *Act* in respect of a contravention of section 7.1, 12, 13, 15, 95 or 96 of the *Act*, in accordance with the conditions listed above, in addition to the amounts required for the return of the goods or as a demand for payment, the person shall be required to pay any applicable outstanding duties and taxes that are owing.

CBSA ENFORCEMENT MANUAL

Part 5

ENFORCEMENT ACTIONS – GOODS, DOCUMENTS, EVIDENCE, AND CONVEYANCES

Chapter 2

TRAVELLER SEIZURES AND ASCERTAINED FORFEITURES

2017/02/13

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Traveller Seizures

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EN Part 5 Chapter 2

Traveller Seizures

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to use seizure as its main enforcement tool when dealing with travellers' infractions. The Administrative Monetary Penalty System (AMPS) is to be used when dealing with commercial infractions.

DEFINITIONS

2. Refer to Part 11 - Glossary.

AUTHORITIES

Customs Act

3. Section 7.1 – States that any information provided to an officer in the administration or enforcement of this Act, the *Customs Tariff* or the *Special Imports Measures Act* or under any other Act of Parliament that prohibits, controls, or regulates the importation or exportation of goods must be true, accurate, and complete.
4. Subsection 11(1) – States that all persons arriving in Canada shall enter only at a CBSA office designated for that purpose that is open for business and without delay, present himself or herself and answer truthfully any questions asked by an officer.
5. Subsection 12(1) – States that all goods that are imported must be reported at the nearest CBSA office that is open for business except under certain circumstances or subject to prescribed conditions.
6. Section 13 – States that every person who reports goods under section 12 or is stopped by an officer under section 99.1 shall:
 - a) answer truthfully questions asked by the officer respecting the goods; and
 - b) if requested by an officer, present the goods and make them available for examination.
7. Subsection 32(1) – States that no goods shall be released prior to their being accounted for and duty paid except under prescribed or regulated conditions.

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8. Subsection 101 – States that goods that have been imported or about to be exported may be detained until an officer is satisfied they have been dealt with in accordance to this Act or any Act of Parliament.
9. Subsection 110(1) – States that an officer, who believes on reasonable grounds that this Act or regulations have been contravened, may seize as forfeit any goods or conveyance that was made use of in respect to the goods.
10. Subsection 124(1) – States that an officer who believes on reasonable grounds that a person has contravened the provisions of this Act or regulations regarding goods or conveyance, the officer may, if the goods or conveyance are not found or the seizure is not practical, demand an amount of money equal to the value of the goods and the duties and taxes owing, or a lesser amount as the Minister may direct.

POLICY GUIDELINES

Contraventions

11. A contravention is a failure to comply with any legislation, regulation or condition of licensing or undertaking administered by the CBSA. A contravention may occur through an act of commission, or through an act of omission. An importer who does something contrary to the *Customs Act*, such as making a false statement, is contravening the Act by commission. An importer who fails to do something required by the *Customs Act*, such as failing to declare some goods, is contravening the Act by virtue of that omission.

Detention

12. Under the authority of section 101 of the *Customs Act*, officers may detain goods that have been imported or about to be exported until the officer is satisfied that the goods have been dealt with in accordance with the *Customs Act* or any other Act of Parliament.

Seizure

13. Seizures are remedies for civil violations as opposed to criminal offences. For this reason, although high standards of evidence must be maintained, the burden of proof required to support a civil action is less than that required for a criminal prosecution.
14. Seizures of goods are civil actions “in rem” or against goods. Prosecutions are criminal actions “in personam”, or against the person. Therefore, where there has been a contravention of a “civil” provision of the *Customs Act*, it would be preferable to rely on that provision. As an example, the failure to comply with the reporting of goods requirement would attract a civil charge pursuant to sections 12

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and 110 of the *Customs Act* rather than a charge of smuggling pursuant to section 159.

15. The prohibitions and offences detailed by sections 153 through 159 inclusive of the *Customs Act* should not be used at the time of seizure. These are more appropriately used for criminal charges. Criminal Investigations Division (CID) may recommend charges under all sections of the *Customs Act*. (see Part 9 Chapters 1 and 2, Prosecution Policy).

Seizure Policy

16. While the *Customs Act* provides for the seizure of all goods and conveyances (subsection 2(1) of the *Customs Act* defines conveyance as any vehicle, aircraft or water-borne craft or any other contrivance that is used to move persons or goods), it is not the policy of the CBSA to take seizure action in all cases. It is recognized that not all contraventions of the *Customs Act* or the regulations are intentional on the part of the person who contravenes them. Negligence, carelessness and lack of knowledge on the part of the importer are mitigating factors worthy of consideration when deciding whether or not to proceed with a seizure action.

In instances involving travellers, it is the policy of the CBSA to extend the benefit of doubt, in lieu of forfeiture and seizure, when it appears evident that the traveller was not aware of CBSA requirements. In such instances, the traveller is to be allowed all entitlements for which they qualify.

17. Seizures result in a referral rate for the person indicated as the principal in a seizure action. The referral rate lessens periodically and returns to normal within 6 years.
18. The referral rate for a person identified as an associate does not increase but an inquiry in the Primary Automated Lookout System (PALS) or the Integrated Primary Inspection Line (IPIL) on the name will reveal information pertaining to the person's association with a seizure action.
19. Officers may seize conveyances used in the unlawful importation of goods (section 110 (1) of the *Customs Act*) or the unlawful transportation of persons (section 110 (2) of the *Customs Act*). However, it is not the policy of the CBSA to seize a conveyance in every case. For goods seized in paragraphs 95 or 100 the conveyance should also be seized whenever a Level 2 or 3 is warranted (as per paragraphs 85 and 86).
20. In cases involving public conveyances e.g. bus, ferry, where passengers are discovered with unreported goods, the conveyance is not to be seized. If it is determined that the person in charge of the conveyance is implicated then the conveyance may be seized.
21. Forfeiture means the loss of proprietary rights, as associated with goods or conveyances. This takes effect at the time of a contravention. The Crown

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becomes the lawful owner at this time and through the act of seizure takes possession of its own property.

22. The seizure provisions of the *Customs Act* only allow for seizure action where there is a contravention of the *Customs Act* or the regulations written pursuant to that Act. Seizures involving contraventions of other acts or their regulations are not authorized under the *Customs Act*.

Note: Goods may be detained under the authority of section 101 until other government department or agency requirements have been met.

23. In instances where there are multiple occupants of a single vehicle in which undeclared goods are found:
 - a) if the amount of goods per individual cannot be determined, officers may create one K19 seizure receipt, identify one principal, assess an amount equal to the aggregate value of goods and seize the conveyance if appropriate; or
 - b) If the amount of goods per individual can be determined, officers may create a K19 seizure receipt for each individual based on the amount of goods per individual, and document the seizure of the conveyance if warranted, on only one of the seizure receipts.
24. When completing the K19 there should only be one principal identified on the form.
25. In the following sections of this chapter, terms of release are specified for the various contraventions. It should be emphasized that the Minister has set these terms of release pursuant to subparagraph 118(a)(ii) of the *Customs Act*.

Threshold for Initiation of Seizure Action

26. While there is no minimum threshold established by law for the initiation of a seizure action, administratively it may not be practical in all instances. It is recommended that CBSA officers use their discretion before proceeding with such enforcement action when the value for duty of the undeclared or unlawfully imported goods is below \$100.00.

Exceptions (subject to reasonable discretion):

27. Seizure action should not normally be taken on alcohol and tobacco products on quantities less than the following:
 - a) 1 L of liquor;
 - b) 1 L of wine;
 - c) 2 dozen beers (or approximately 8.5 litres);

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- d) 200 cigarettes;
 - e) 400 g tobacco; or
 - f) 400 tobacco sticks.
28. In instances where a seizure is issued for less than the above noted recommended minimum, no conveyance seizure should be applied.
29. In situations involving repeat offenders, officers may use their discretion for seizure action on low value goods. In cases where individuals have not been deterred by a previous warning or enforcement action, seizure or higher-level terms of release should be applied.

ALLEGATIONS

Section 12 allegations

30. The allegation of **non-report** of an import will be used for seizures against travellers who have not reported the importation of personal goods, regardless of the method of concealment used to unlawfully introduce the goods into Canada. The appropriate wording is as follows: "The said goods are seized under section 110 of the *Customs Act* because they have been unlawfully imported by reason of non-report, contrary to the provisions of section 12 of the said Act."

Section 7.1 allegations

31. The allegation of **inaccurate information pertaining to an import** will normally be used when a person has given untrue, inaccurate or incomplete information (other than value) to an officer, either verbally or in writing, in regards to goods being imported. This includes a false description. The appropriate wording is as follows: The said goods are seized under section of 110 of the *Customs Act* because the information provided to the CBSA pertaining to the import of these goods was not true, accurate or complete in contravention of **section 7.1** of the *Customs Act*.

Note: The allegation of inaccurate information (contravening section 7.1) applies when a person declares an import but provides a false country of origin with intent to evade duties and taxes or permit requirements. This includes situations in which a person has stated that goods are Canadian goods returned when in fact they are being imported for the first time. People do not necessarily know the rules of origin and discretion should be used in each case before a seizure is applied for origin.

32. The allegation of **undervaluation** will normally be used when a person has given a false value to an officer, either verbally or in writing, in regards to goods being imported. The appropriate wording is as follows: The said goods are seized under section 110 of the *Customs Act* because the value provided to the CBSA

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pertaining to the import of these goods was not true, accurate or complete in contravention of **section 7.1** of the *Customs Act*.

Section 11 allegations

Failure to report inwards (Section 11)

33. Contraventions involving a failure to report inward occur when a person does not, on arrival in Canada, enter Canada at a CBSA office designated for that purpose that is open for business. This contravention takes place when entry into Canada does not take place at a designated and open port of entry (e.g. enter between ports of entry, at a closed port). This is a contravention of section 11 of the *Customs Act* and the conveyance becomes subject to seizure.

The allegation of **failure to report inwards** will normally be used to describe infractions where a person does not enter Canada at a designated and open port of entry. The appropriate wording is as follows:

“That the said vehicle/vessel/aircraft was used to transport persons into Canada in contravention of the *Customs Act*”.

Running the port (Section 11)

34. Running the port contraventions take place when a person, on arrival in Canada, enters Canada at a CBSA office designated for that purpose that is open for business, but passes through without reporting to an officer, or fails to remain at or leaves the confines of the CBSA office in defiance of an officer's instructions. This is a contravention of section 11 of the *Customs Act* and the conveyance becomes subject to seizure.

The allegation of **running the port** will normally be used to describe the act of failing to remain at the port of entry until the CBSA process is completed and/or leaving against the orders/instructions of an officer (e. g. did not stop at the primary inspection line, failed to report to the secondary examination area as instructed, left the CBSA office without having been released). The appropriate wording is as follows:

“That the said vehicle/vessel/aircraft was removed from a CBSA office without having been released by an officer”.

Note: For vehicle seizures under the *Immigration and Refugee Protection Act* (IRPA), refer to Immigration, Refugee and Citizenship Canada (IRCC) [ENF 12 - Search, Seizure, Fingerprinting and Photographing](#)

35. The allegation of **failure to transport passengers and crew** will normally be used to describe the situation where the person in charge of a conveyance fails to

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transport passengers or crew to a CBSA office for presentation. This is a contravention of section 11(3) of the *Customs Act*. The conveyance becomes subject to seizure and the appropriate wording is as follows: "That the person in charge of this conveyance failed to transport passengers or crew for presentation at a CBSA office". Under AMPS this allegation is committed by a person in charge of a commercial conveyance, e.g., bus, commercial aircraft. C018 is the appropriate allegation to use in such cases.

36. There are regulations written pursuant to Section 11 of the *Customs Act*, which govern the presentation of persons arriving in Canada. When a **contravention of the *Presentation of Persons Regulations*** occurs, the conveyance used to transport such persons becomes subject to seizure. The Minister has directed that under these specific circumstances terms of release will be offered on the basis of a fixed monetary amount.

Multiple allegations involving a conveyance

37. In instances of multiple contraventions by the same or different people in one conveyance, the conveyance cannot be seized more than once.
38. If a person has contravened section 11 or its regulation (for example by failing to present himself, passengers or crew), and has also contravened section 7.1 or 12 (for example by inaccurately reporting or failing to report goods), the officer will seize the conveyance and select the most appropriate section 11 allegation (see allegations above). The officer may issue a second K19 seizure receipt for inaccurate information or the failure to report goods in accordance with section 7.1 or 12 but would not apply a conveyance penalty.
39. Where no section 11 allegation is applicable, officers can document both section 7.1 and section 12 contraventions on the same K19 seizure report along with any applicable conveyance penalty. The conveyance penalty applies to the aggregate of goods.

Undeclared Conveyances

40. CBSA officers may encounter contraventions involving undeclared or improperly entered foreign or non-duty paid conveyances. When a traveller has been given the opportunity to make a full and complete declaration at primary concerning any purchases or acquisitions abroad and fails to declare the acquisition of the conveyance being used to enter Canada, such conveyance may be seized as being not reported. The non-report allegation shall apply.

Prohibited Conveyances

41. Foreign vehicles imported from other than the United States may be prohibited entry under tariff item 9897. Should a prohibited vehicle (that is a vehicle that would not qualify for an exemption of the prohibited status under normal

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circumstances) be seized for a contravention of the *Customs Act*, release may be offered conditional on exportation.

42. The decision to allow exportation should be considered on a case-by-case basis. Exportation may be refused, for example when the importer has made previous attempts to import the same prohibited vehicle.
43. The foregoing procedure will also apply to vehicles falsely declared to the CBSA with the intention of waiving the prohibition. Such cases will be most commonly encountered in instances where vehicles imported from other than the United States are declared as settler's effects, or personal effects of returning residents, or with vehicles declared as gifts.

Non-Report of Conveyance Repairs, Tires and Accessories

44. Repairs that were eligible for remission (i.e. incidental to a trip, necessitated by an accident or unforeseen wear, and made solely to enable the safe return of the vehicle to Canada) may be subject to seizure when not reported. Officers may offer terms of release of 5 per cent of the value of unreported repairs, where the value of the repairs is greater than \$2,000.
45. When an officer believes the unreported repairs were not necessary for a safe return (e.g. upgrading wheels to mag wheels), the officer may issue a seizure and offer terms of release as per the tables provided later in this chapter.
46. The allegation would be: "That certain repairs made to the vehicle abroad were not reported and entered at the CBSA".

Note: See Memorandum D8-2-1 Canadian Goods Abroad for information on dutiable repairs.

47. Non-report of tires is treated in the same manner as dutiable repairs.
48. Where repairs to vehicles or goods are of a substantial value or there is suspicion of fraud, the matter should be reported to Investigations.
49. Undeclared installed accessories may be treated in the same manner as dutiable goods. The only exception is that a conveyance seizure should not be applied when undeclared installed accessories are necessary to make it possible for the conveyance to be driven back to Canada. This policy is based on the theory that the conveyance cannot be "made use of", in the meaning of section 110(1)(b) of the *Customs Act*, to transport an integral part of itself. For example, installed articles such as engine accessories, mufflers, tail pipes and wheels, when seized, would not attract a conveyance seizure and normally would be released on the terms of release applicable to dutiable repairs.

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50. A conveyance seizure may apply when seizing undeclared, uninstalled accessories such as radios, antennas, seat covers, body ornaments, wheel covers, tape decks, speakers, etc., because they are not necessary for the operation of the vehicle.
51. When a conveyance is first imported (not a Canadian good returned), the value must include not only the purchase price but also all upgrades. If the upgrades or repairs are not included in the declared value, the conveyance may be seized using the allegation of undervaluation.

Modified Conveyances

52. A modified conveyance for CBSA purposes is defined as a conveyance that has been modified from the manufacturer's original design by adding compartments or manufacturing access to areas otherwise inaccessible, for the specific purpose of illegally importing goods.
53. Modifications that fall within this definition may include but are not limited to:
 - a) a false wall built in the nose, ceiling or sides of a trailer;
 - b) the welding of a compartment to the chassis of a conveyance;
 - c) partitioning of a gas tank; and
 - d) adding a secret door to access a compartment or area not originally accessible on a conveyance.
54. When goods subject to seizure are found behind false panels or within hidden compartments, the conveyance is to be seized. It is not to be offered for release without consideration of the nature and quantity of the goods seized, the amount of revenue evaded, the market value of the conveyance and the extent of the modifications.
55. When a conveyance has been modified and there is no contravention relating directly to the modification (e.g. a modified gas tank is empty), the conveyance cannot be seized on those grounds.
56. Where only minor quantities of dutiable goods or prohibited goods are seized, release may be offered in the normal manner, providing the modifications are not extensive and that prior to release they are rendered inoperable. Any costs incurred by the CBSA for rendering the modifications inoperable are to be added to the terms of release but not included on the seizure receipt.
57. The modification costs should be itemized on a K24 (*Non-Monetary General Receipt*).

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58. When a contravention has been detected and there are reasonable grounds to believe that the conveyance had been used on previous occasions to conceal non-reported goods, although no previous seizures had been made, terms of release need not be offered. In all such instances, officers must justify their actions in their reports.
59. In the case of a repeat offender, whether using the same modified conveyance as had been seized on a previous occasion or different conveyance modified for the same purpose, no terms of release should be offered, regardless of the above considerations.

Towed Conveyances

60. The *Customs Act* defines a conveyance as any vehicle, aircraft or water-borne craft or any other contrivance that is used to move persons or goods. When encountering situations where towed conveyances e.g. car-camper trailer, are involved in the unlawful importation, exportation or transportation of goods or the unlawful transportation of persons, the following guidelines should be used for seizure action.
61. If the towing conveyance containing the goods is modified, it is seized with no terms of release.
62. If the towed conveyance containing the goods is modified, it is seized with no terms of release.
63. If both the towed and towing conveyances containing goods are modified both should be seized with no terms of release.

Note: The officer should perform two separate seizures in this instance.

64. If commercial unreported goods are found in an unmodified conveyance (towed or towing) it is not seized but an AMP is applied to the carrier or importer.
65. If non-commercial unreported goods are found in an unmodified conveyance (towed or towing) it is seized and terms of release are offered

Note: A second conveyance can be entered in ICES. When a second conveyance is entered, ICES will automatically indicate that it was not seized.

Conveyances Used in Drug Smuggling

66. Seized conveyances used to smuggle drugs may be offered for release in accordance with the Terms of Release as specified under Part 2, Chapter 6 – Drugs, of the Enforcement Manual. When drugs are seized, the HC 3515 will continue to be used for the detailed description of the goods. A brief description and the approximate weight of the drugs should be shown on the form K19 used to document the seizure of the conveyance. The schedule of the special terms of

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release for conveyances used in smuggling personal use quantities of drugs is included later in this chapter.

Conveyances Used in Unlawful Importations of Undeclared Firearms and Prohibited Weapons

67. Conveyances used by individuals to unlawfully import firearms and prohibited weapons may be subject to seizure. The schedule of terms of release is found later in this chapter. (See Part 2 Chapter 3 Firearms and Weapons)
68. Officers are encouraged to use discretion in seizing conveyances if the prohibited weapon is not a firearm (e.g. a switchblade). However, there may be instances where it is preferable to take a further deterrent action in addition to seizing the prohibited weapon, especially when there is evidence of intent to smuggle. In such cases, officers may seize the conveyance and offer it for release. The schedule of terms of release is found later in this chapter.

Third Party Notification

69. An officer seizing goods or conveyances will, at the time of the seizure, take positive steps to determine if there are or could be third parties involved.
70. Where it is determined that the person from whom the goods or conveyances are seized is not the actual owner of the goods, or it is apparent that there is an outstanding lien against the goods (this may be indicated on a sales receipt, or an insurance or registration slip), the owner, mortgage, or lien-holder must be notified that the goods are under seizure and that they may make application under section 138.
71. Notification under subsection 110(4) to the owner, mortgage, or lien-holder will be in the form of a completed Notice of Seizure (K138).

Note: Circumstances of the actual seizure are confidential between CBSA and the person from whom the goods or conveyance was seized and should not be quoted in the notification.

72. A copy of each K138 form must be forwarded immediately to the Adjudications Division if an appeal is filed

TERMS OF RELEASE - GOODS

73. The terms of release for seizures of personal goods unlawfully imported by travellers into Canada is dependent on two factors:
 - a) the group that the commodity falls into; and
 - b) the level of the infraction.

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The Groups

74. The CBSA's categorizes commodities under three groups to alleviate the necessity for officers involved in enforcement actions to devote an inordinate amount of time classifying goods in order to arrive at a terms of release factor.

Group 1

75. Group 1 includes clothing, footwear, textiles (including towels), bedding, curtains, carpets, jewellery and watches. The principle behind the division of goods was established on the basis that commodities attracting a combined rate of duties and taxes of 25 per cent or more should fall under a separate group - Group 1 - and they should attract higher terms of release due to the potential for higher revenue loss.

Group 2

76. Group 2 covers other goods attracting combined rates of duties and taxes of less than 25 per cent. The terms of release for violations involving such goods are less than those in Group 1 because of the lesser potential for revenue loss. Group 2 includes all goods except for group 1 goods, alcoholic beverages and tobacco products.

Group 3

77. Group 3 was created to cover the exceptions to group 1 and 2, namely all alcoholic beverages and tobacco products. These were treated separately as there are no terms of release.

Levels of Infractions

78. For the purposes of determining the appropriate terms of release applicable to the range of violations, three levels or degrees were established to recognize the culpability of the individual. The terms of release with few exceptions have been based on a factor calculated on a percentage of the value of the goods.
79. It is important to realize that terms of release for seized goods are only offered subsequent to the actual physical seizure authorized by section 110 of the *Customs Act*.
80. The authority for return of goods seized is pursuant to section 117 of the *Customs Act*, which specifies that an officer may, subject to this or any other Act of Parliament, return any goods that have been seized under this Act to the person from whom they were seized or to any person authorized by the person from whom they were seized on receipt of:

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- a) an amount of money of a value equal to
 - i) the aggregate of the value for duty of the goods and the amount of duties levied thereon, if any, calculated at the rates applicable thereto
 - (A) at the time of seizure, if the goods have not been accounted for under subsection 32(1), (2) or (5) or if duties or additional duties have become due on the goods under paragraph 32.2(2)(b) in circumstances to which subsection 32.2(6) applies, or
 - (B) at the time the goods were accounted for under subsection 32(1),(2) or (5), in any other case, or
 - ii) such lesser amount as the Minister may direct; or
- b) where the Minister so authorizes, security satisfactory to the Minister.

Level 1

81. Level 1 applies to violations of lesser culpability. The degree to which the importer carried out a scheme to contravene the *Customs Act* was not furthered beyond an initial ineffectual attempt. This level might generally be applied to offences of omission, rather than commission. Commission offences require more active involvement by the importer.

Level 2

82. Level 2 applies to violations where the circumstances demonstrate an active attempt by the importer to contravene the *Customs Act*. It is also applicable to instances involving repeat offenders, where it has become apparent that a stronger deterrent factor is required.

Level 3

83. Level 3 applies to circumstances where evidence exists of a more sophisticated scheme involving devices to facilitate the violation or where the individual concerned has been the subject of previous seizure action.

Non-Report and Inaccurate Information

84. Level 1 is applied when:
- a) goods are not reported to CBSA or goods are reported but inaccurate information is given concerning acquisition, entitlements or description; and
 - b) the goods are not concealed; and

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- c) a full disclosure of the true facts concerning the goods is made at the time of the discovery.
85. Level 2 is applied when the circumstances are the same as for level 1 but:
- a) goods are concealed or disguised, or
 - b) inaccurate information is given concerning the goods following their discovery; or
 - c) the person has been the subject of a previous seizure action.
86. Level 3 is applied when the circumstances are the same as for level 2 but:
- a) false documents or receipts are presented for the goods; or
 - b) goods are concealed within false compartments; or
 - c) the person has been subject to previous seizure action.

Undervaluation

87. Level 1 is applied when:
- a) goods are reported for a value less than their actual transaction value but no falsified documents were presented; and
 - b) full disclosure is made prior to the discovery of documentary evidence
88. Level 2 is applied when :
- a) No falsified documents were presented however documentary evidence is found, revealing the actual value of the goods is more than reported before full disclosure is made; or
 - b) the person has been subject of a previous enforcement action.
89. Level 3 is applied when the same criteria exist as for level 2, except the person is in possession of, and attempts to use falsified documents to support the undervaluation.

TERMS OF RELEASE – CONVEYANCES

90. The Special Terms of Release for Conveyances Used in Smuggling Personal Use Quantities of Drugs are as follows:

Amount	Marijuana	Hashish	Hashish Oil	Controlled Drugs	Hallucinogens	Cocaine/ Opiates
*\$220	over 8 grams but not over 15 grams	over 2 grams but not over 4 grams	1 gram or less	over 10 pills but not over 20 pills	over 1 dosage but not over 4 dosages	1 gram or less \$400
\$440	over 15 grams but not over 30 grams	over 4 grams but not over 8 grams	over 1 gram but not over 2 grams	over 20 pills but not over 40 pills	over 4 dosages but not over 8 dosages	
\$550	over 30 grams but not over 60 grams	over 8 grams but not over 16 grams	over 2 grams but not over 4 grams	over 40 pills but not over 60 pills	over 8 dosages but not over 12 dosages	
\$660	over 60 grams but	over 16 grams	over 4 grams	over 60 pills but not	over 12 dosages but	

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	not over 100 grams	but not over 24 grams	but not over 6 grams	over 80 pills	not over 16 dosages	
\$770	over 100 grams but not over 150 grams	over 24 grams but not over 32 grams	over 6 grams but not over 8 grams	over 80 pills but not over 110 pills	over 16 dosages but not over 20 dosages	
\$880	over 150 grams but not over 200 grams	over 32 grams but not over 40 grams	over 8 grams but not over 10 grams	over 110 pills but not over 140 pills	over 20 dosages but not over 24 dosages	
\$990	over 200 grams but not over 250 grams	over 40 grams but not over 46 grams	over 10 grams but not over 12 grams	over 140 pills but not over 160 pills	over 24 dosages but not over 28 dosages	
\$1100	over 250 grams but not over 300 grams	over 46 grams but not over 56 grams	over 12 grams but not over 14 grams	over 160 pills but not over 180 pills	over 28 dosages but not over 32 dosages	

For amounts in excess of the above stated sums:

over 300 grams: \$4 for each additional gram	over 56 grams: \$20 for each additional gram	over 14 grams: \$70 for each additional gram	over 180 pills: \$8 for each additional pill	over 32 dosages: \$40 for each additional dosage	over 1 gram: \$400 for each gram
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*Note: This amount may be applied in instances of smaller quantities if the individual is known to have a previous history of drug smuggling.

Special Terms of Release for Conveyances Used in Smuggling Commercial Quantities of Drugs

91. See AMPS Master Penalty Document. Also refer to Part 5, Chapter 1, Commercial Seizures, Ascertained Forfeitures, and AMPS Policy and Procedures for further details.
92. Only conveyances that have been modified for smuggling purposes will be seized. There are no terms of release and an AMP penalty applies as well.

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93. The terms of release for the return of seized conveyances for firearms and weapons (customs tariff 98.98) as well as penalty amounts for ascertained forfeitures are as follows:

Commodity	Amounts of Money for the Return of Seized Conveyances for Non-Report and Inaccurate Information		
	<u>First Contravention</u>	<u>Second Contravention</u>	<u>Third and Subsequent Contraventions</u>
Non-Restricted Firearms	50% of the terms of release offered for the firearm	100% of the terms of release offered for the firearm	100% of the terms of release offered for the firearm
Restricted or Prohibited Firearms	\$1000/ firearm	\$2000/ firearm	\$3000/ firearm
Prohibited Weapons (other than firearms)	\$500/ item		
Prohibited Ammunition	\$500/ commodity group		
Prohibited Devices (e.g. handgun barrel, silencer, large-capacity cartridge magazine, replica firearm)	\$500/ commodity group		
Components or parts designed exclusively for use in manufacturing or assembling automatic firearms	\$500/ commodity group		

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94. The terms of release for the return of seized conveyances for allegations of failure to report inward, running the port, contravention of the *Presentation of Persons Regulations* and Failure to transport passengers/crew as well as penalty amounts for ascertained forfeitures are as follows:

IMPORTATION Sec 11			
Failure to report Inward	<u>First Contravention</u>	<u>Second Contravention</u>	Third and subsequent Contraventions
	\$1000	\$2000	\$3000
Running the port	\$1000	\$2000	\$3000
Contravention of <i>Presentation of Persons Regulations</i>	\$1000	\$2000	\$3000
Failure to transport passengers/crew	\$1000	\$2000	\$3000

95. The terms of release for non-report or inaccurate information (excluding alcohol and tobacco) are as follows:

NON-REPORT Sec. 12 AND INACCURATE INFORMATION Sec. 7.1			
Group 1 - Clothing, footwear, textiles, towels, bedding, curtains, carpets, jewellery and watches	<u>Level 1</u> 30% of value	<u>Level 2</u> 50% of value	<u>Level 3</u> 70% of value
Group 2 - All other goods, except alcohol and tobacco	25% of value	40% of value	55% of value
Conveyance Terms of release	N/A	50% of the terms of release for the goods	100% of the terms of release for the goods

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96. The terms of release for undervaluation (excluding alcohol and tobacco) are as follows:

UNDervaluation Sec. 7.1			
Group 1 - Clothing, footwear, textiles, towels, bedding, curtains, carpets, jewellery and watches	<u>Level 1</u> 30% of u.v. amount	<u>Level 2</u> 50% of u.v. amount	<u>Level 3</u> 70% of u.v. amount
Group 2 - All other goods, except alcohol and tobacco	25% of u.v. amount	40% of u.v. amount	55% of u.v. amount
Conveyance Terms of release	N/A	N/A	N/A

97. When undervaluation is alleged, terms of release apply to the undervalued portion only, however an amount equal to duties and taxes applicable to the declared portion is to be added to the total if such amount has not already been paid. If an amount has been paid, it should still be shown in the calculation of the terms of release; however a note should appear beside it cross referring to the transaction number preceded by the words "Paid on..." Such amount will then be credited (not charged) against the total deposit amount.
98. Whenever a payment of duty and/or taxes is owing on a portion of the value of goods subject to seizure, such payment should not be processed in a normal method on an accounting document. All monies payable in regards to goods subject to forfeiture should be included in the terms of release. In cases of undervaluation or inaccurate information, where a portion of duty and/or taxes must be accounted for, that portion will be assessed on the form K 19S as a duty factor and form part of the total deposit required for terms of release. The duty factor: is an amount of money equal to the duty and/or taxes payable on lawfully entered goods.
99. Examples of undervaluation are as follows:

- a) **Level 1, group 2:** A traveller declares at primary that he bought a car for \$1,000.00 and doesn't present a receipt. At the secondary examination, the officer having some doubts about the declared value of the car, questions the traveller on that purchase. The traveller admits that the car is undervalued and voluntarily discloses the actual value of \$4,000.00. The calculation is:

Terms of release - 25% of	= \$ 750.00
\$3,000.00	
on \$1,000.00 Duty factor	= <u>\$ 138.48</u>
TOTAL	\$ 888.48

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Note: If duty had been paid on the \$1,000.00 declared, the calculation would be done as follows:

TERMS OF RELEASE - 25% of	= \$ 750.00
\$3,000.00	
on \$1,000.00 Duty factor	= <u>\$ 000.00</u>
TOTAL	\$ 750.00

- b) **Level 2, group 2:** A traveller declares at primary that he bought a car for \$1,000.00 but does not have a receipt to present. The officer finds hidden in a book, on the dashboard, a receipt for the same car for the amount of \$4,000.00. The calculation is:

TERMS OF RELEASE - 40% of	= \$1,200.00
\$3,000.00	
on \$1,000.00 Duty factor	= <u>\$ 138.48</u>
TOTAL	\$1,338.48

- c) **Level 3, group 2:** A traveller declares at primary that he bought a car for \$1,000.00. At the secondary level he presents a receipt for \$1,000.00. The officer finds hidden in a book, on the dashboard, a receipt for the same car for the amount of \$4,000.00. The calculation is:

TERMS OF RELEASE - 55% of	= \$1,650.00
\$3,000.00	
on \$1,000.00 Duty factor	= <u>\$ 138.48</u>
TOTAL	\$1,788.48

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100. The terms of release amounts for alcoholic beverages and tobacco products are as follows:

NON-REPORT (Sec. 12), INACCURATE INFORMATION or UNDERVALUATION (Sec 7.1)			
Group 3 - All alcoholic beverages and tobacco products	<u>Level 1</u> no terms of release	<u>Level 2</u> no terms of release	<u>Level 3</u> no terms of release
Conveyance Terms of release	N/A	\$40/200 cigs \$120/Kg. Tobacco \$10/Ltr. Alc \$10/24 beer \$2/Ltr. Wine	\$55/200 cigs \$160/Kg. Tobacco \$12/Ltr. Alc \$12/24 beer \$3/Ltr. wine

Note: Cigars, tobacco sticks, and other such products manufactured from tobacco, but not specifically mentioned should be treated as tobacco with the same terms of release applied.

Unconditionally Duty Free and Tax Exempt or 0 Per Cent Rated Goods

101. When unconditionally duty free and tax exempt or 0 per cent rated goods are not reported the following terms of release shall apply:

Level 1 and less than \$2000 value, forced accounting;
Level 1 and \$2000 or over in value, 5 per cent of value;
Level 2 or 3 and less than \$1000 value, forced accounting; or
Level 2 or 3 and \$1000 or over in value, 10 per cent of value.

Exemptions and Entitlements

102. For a returning resident to qualify for an exemption on personal goods, two conditions must be fulfilled:

- a) the goods must be reported by that person at time of return to Canada (see tariff heading number 98.04); and
- b) the returning resident must have been absent the length of time specified by one of the classification numbers, whether it be 24 hours, 48 hours, or 7 days. A declaration of the length of absence is not a pre-requisite for this entitlement.

103. Once both of the foregoing conditions are met the additional entitlement of the preferential rates allowed pursuant to classification number 9804.30.00.00 may be extended, but only to a maximum of the originally declared values.

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104. Officers will only give returning residents the benefit of personal exemptions on the value of goods that have been properly declared under classification numbers 9804.10.00 or 9804.20.00. In cases of nil declarations, no exemptions or preferential rates will be allowed. Exemption entitlements should be documented on declaration forms with copies to the seizure report.

105. Examples of the application of exemptions is as follows:

- a) A returning resident declares \$200 in clothing after an absence of 48 hours. During the secondary examination undeclared jewellery is found totalling \$400. Thus, the officer would:
 - i) allow a portion of an exemption of \$200 under 9804.10.00.00 (48 hrs absence); and
 - ii) seize on the balance of \$400
- b) A returning resident declares a jewellery item worth \$1050, and claims the \$750 exemption entitlement after a stated absence of seven days pursuant to classification number 9804.20.00.00. The overage of \$300 would normally attract the beneficial duty rate pursuant to classification number 9804.30.00.00. Following secondary examination evidence is discovered which reveals that the returning resident has made an intentional false declaration and was only absent for six days. The officer would:
 - i) allow a \$400 exemption under 9804.10.00.00 (48 hrs. absence);
 - ii) allow \$300 at the beneficial duty rate under 9804.30.00.00; and
 - iii) seize on \$350 (difference between the claimed and actual personal exemption entitlement)
- c) A returning resident declares to CBSA the purchase of a television set having a value of \$500 and an exemption entitlement of \$400 after an absence of 48 hours pursuant to classification number 9804.10.00.00. The overage of \$100 would normally attract the beneficial duty rate pursuant to classification number 9804.30.00.00. Following secondary examination, a purchase receipt is found which shows the true value of the goods to be \$700, resulting in an undervaluation of \$200. The officer would:
 - i) allow a \$400 exemption under 9804.10.00.00 (48 hrs. absence);
 - ii) allow \$100 at the beneficial duty rate; and
 - iii) seize on the \$200 balance

Former Residents and Settlers

106. In the case of former residents and settlers, contraventions may occur with respect to inaccurate information given concerning the ownership, possession and use requirements, or for the accommodation of others. Where it is suspected that inaccurate information has been given, the officer should request the importer to

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produce a receipt and/or bill of lading for the goods. If doubt still remains, but there is insufficient evidence to take seizure action, the officer may extend the benefit of doubt and allow entry of the goods under tariff item 9805.00.00 or 9807.00.00, or may release the goods on payment of the applicable duty and taxes.

Note: When completing accounting documents with respect to a declaration of goods using tariff item 9805.00.00 or 9807.00.00, officers should ensure that the traveller reads and fully understands the conditions of the applicable tariff item.

Special Notes

107. When demanding a monetary deposit as terms of release pursuant to a seizure of goods, it is important to understand that all money demanded is considered to be a penalty. In any instances where duties and taxes become a consideration for terms of release pursuant to a seizure, they are only used as factors to calculate the prescribed penalty.
108. Non-residents who wish to export seized goods (except those goods with no terms of release), may be given the opportunity to export them provided that the officer is satisfied that the goods are not intended for consumption in Canada. Release for export should not be considered automatic, with every case being judged individually. When release for export (under CBSA supervision) is deemed appropriate, the normal terms of release should be calculated in accordance with the group of goods and level of offence. The total of goods and conveyance terms of release thus determined may then be reduced by 20 per cent in recognition of the export.
109. As an example, group 1, level 2 goods are seized having a value of \$1,000. The normal terms of release would be $\$1,000 \times 60\% = \600 with a conveyance terms of release (if applicable) of $\$600 \times 50\% = \300 for a total terms of release amounting to \$900. If terms are contingent on export the total dollars should be reduced by 20 per cent, i.e. $\$900 - (\$900 \times 20\%) = \$720$. It is not intended that the terms of release percentage be reduced.

Prohibited Goods (Customs Tariff 98.97 & 98.99)

110. Unlawfully imported prohibited goods may be seized using the form K19. This would include goods such as those listed in the *Customs Tariff* as prohibited.
111. No terms of release are to be offered for unlawfully-imported prohibited goods.
112. For conveyances used in the transport of unlawfully-imported prohibited goods:
 - a) when a level 1 seizure is warranted and the total value of the goods is less than \$200, the conveyance should not be seized;

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- b) when a level 2 or 3 seizure is warranted (e.g. repeat offender) and the total value of the goods is less than \$200, the terms of release are calculated at a flat rate of \$50; and
- c) when a level 1,2 or 3 seizure is warranted and the total value of the goods is \$200 or more, the conveyance may be seized and the terms of release are calculated at 25% of the total value of the goods.

113. In no case should the conveyance terms of release exceed the value of the conveyance.

114. No conveyance seizure should be applied when the conveyance itself is the object of the unlawful importation.

Prohibited and Restricted Firearms and Prohibited Weapons

115. When an undeclared restricted firearm, prohibited firearm or prohibited weapon is found in the possession of a non-resident or returning resident, the weapon may be seized and no terms of release are to be offered. (See Part 2 Chapter 3 Firearms and Weapons)

116. Non-restricted firearms may be offered for release provided that the person has the proper permits. Such weapons are classified as Group 2 goods and terms of release would be 25, 40 or 55 per cent of their value, depending on the level of the contravention. Terms of release for the conveyance would be either 50 per cent or 100 per cent of the terms offered for the goods, depending on the level of contravention.

If an undeclared restricted or prohibited firearm is seized from a traveller BSO's are advised to contact the regional Criminal Investigations Division (CID), Regional Intelligence Officer (RIO), RIFLO or local Police (for consideration of *Criminal Code* and/or *Customs Act* charges).

Alternate Inspection Programs (CANPASS, NEXUS, FAST etc.)

117. For participants in accelerated release programs, the same seizure thresholds will apply however the terms of release will be one level higher. Also, the participant may become ineligible for accelerated release programs (i.e. NEXUS, CANPASS or FAST/CDRP) or if already a member, participation may be cancelled. Conveyances, however, are not applied at one level higher just because the person is an accelerated program participant. Officers should refer to the applicable program regarding its policies and procedures for removal. The following is a link to a site containing information on alternative reporting methods for travellers.

[People Processing Manual, Part 3 – Trusted Traveller Programs](#)

Provincial Sales Taxes

118. Where goods are seized and there is an agreement in place between CBSA and the provincial government concerning the collection of provincial sales taxes, CBSA officers are reminded to ensure that these taxes are collected separately at the time of the release of the goods. Provincial Sales taxes are not duties as defined in section 2 of the *Customs Act* and therefore, cannot be used in calculating terms of release for the goods. The PST is collected on the manual form K21, Cash Receipt, at non-automated locations or on the automated K21 at locations equipped with TEPS.

Duty Free Store Purchases

119. When duty free store purchases are found and there does not appear to have been a deliberate attempt to not report the goods, the traveller should be extended the benefit of doubt and allowed any entitlement, with duty and taxes collected on any overage. Officers are also encouraged to use discretion when dealing with non-residents who are in possession of undeclared alcohol or tobacco products purchased at a duty free store. When such items are for personal consumption it is appropriate to waive seizure action, allow the traveller their entitlement and collect duty and taxes on excess amounts.

120. While the foregoing deals with goods purchased at Canadian or foreign duty free stores and not reported to CBSA, a number of regions have identified problems with respect to Canadian land border duty free stores. These problems may be outlined as follows:

- a) persons already in Canada, purchase goods at a Canadian duty free store, but do not leave the country (e.g. by walking to the store or by driving the wrong way on a one way road to avoid entering the United States); or
- b) persons entering Canada purchase goods at a Canadian duty free store after having been cleared through CBSA and then proceed into Canada.

121. The following procedures have been developed to cover the aforementioned problems. If similar problems exist at duty free stores located at airports these procedures may also be applied:

- a) In the case of a first time contravention involving either of the above two situations, where it is unclear as to whether it was a deliberate act, officers are encouraged to use their discretion. If the purchaser and the goods are still at the compound a warning may be issued to the person and the goods allowed to be either duty or tax paid or returned to the duty free store. If it is found that the purchaser has left the compound with the goods, they should be requested to return and pay the applicable duties and taxes. This may not be possible in the case of U.S. or foreign visitors. If the duty free store purchase is of significant value, the matter may be referred to CBSA Investigations for follow up action.

- b) In the case of contraventions where it is determined that it was a deliberate act, the goods and any conveyance used may be seized, bearing in mind that seizure action is not normally taken unless the amount of revenue exceeds the specified thresholds. An allegation of non-report should be used, with terms of release offered as a level 2 contravention on the form K19S.
- c) In the case of repeat contraventions or contraventions involving goods of high value, where it is determined that a higher deterrent factor is warranted, terms of release detailed under a level 3 contravention should be offered, as well as consideration of criminal prosecution.

Ascertained Forfeitures

- 122. Section 124 of the *Customs Act* provides the authority to effect ascertained forfeitures in respect of goods or conveyances when: "the goods or conveyance is not found or if the seizure thereof would be impractical."
- 123. Generally the detection and enforcement of violations triggering ascertained forfeitures occur after the fact, that is, after the physical goods have left CBSA's control. Because of the foregoing this type of action is usually carried out by Investigations.
- 124. Ascertained forfeitures, because of the circumstances under which they occur, rely on a different standard of evidence, and they are documented on a K9 form, Notice of Ascertained Forfeiture. It is therefore recommended that in instances when officers feel that they have no alternative but to proceed with such enforcement action, they should request, through their immediate supervisors, to contact Investigations for guidance and advice on how to proceed.

Voluntary Disclosures

- 125. The Agency encourages voluntary disclosure of information relating to the possession of goods unlawfully imported into Canada.
- 126. Accordingly, revenue assessed as a result of bona fide voluntary disclosures should be collected by way of an accounting document rather than by seizure action.
- 127. There will, however, be instances when individuals will seek to circumvent seizure action once it becomes evident that their importing practices are being investigated. It is therefore recommended that when an officer believes this to be the case, the relevant information should be referred to either Investigations or a Regional Intelligence Officer.

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128. All accounting documents concerning voluntary disclosures should be annotated with the following statement: "Acceptance of these duties does not limit either the importer's liability or the Agency's ability to seize or take subsequent action against the goods or the importer."

Release of Seized Goods

129. CBSA officers must ensure that prior to releasing goods they comply with all federal and provincial legislation for which CBSA has administrative responsibility.

Note: Seizure action does not remove the status of restricted or prohibited goods.

130. Seized goods covered by the Import Control List must only be released for retention in Canada on the presentation of an appropriate permit once terms for release have been met.

Preferred Payment Options

131. Cash, certified cheque, money order or a valid credit card are acceptable methods of payment.

132. It is not the CBSA policy to accept security in lieu of payment of terms of release.

133. Where a person is unable to make a deposit in cash, certified cheque, money order or credit card, without unreasonable delay or inconvenience, officers may accept an uncertified cheque drawn on a Canadian bank for the portion of the deposit that cannot be made in cash or equivalent, for release of a conveyance only, provided that the officer is satisfied of the good faith of the person tendering the cheque.

Prosecutions

134. Superintendents and border services officers are reminded that in addition to civil enforcement action CBSA Investigations may undertake criminal prosecution. For further information refer to EN manual Part 9 Chapter 1, paragraphs 12-16 which describes "Referrals to Investigations" and "Prosecutions Categories".

Request for Correction

135. Section 127(1) of the Customs Act provides certain designated officers with the authority to cancel a seizure made under section 110 of the Customs Act within 30 days after seizure.
136. CBSA must be satisfied that there was no contravention or that there was a contravention but the amounts assessed, collected, demanded or taken as security are in error.

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137. After the 30 day period has expired, all requests for cancellations, whether client or CBSA-initiated, must be sent to Adjudications who will determine whether the request is timely.

Adjudications

138. Officers should refer a traveller to the provisions of section 129 of the *Customs Act*, which are clearly embodied on the seizure form.
139. Under no circumstances will CBSA officers contact the Recourse Directorate for assistance in the decision-making process leading to seizure action.
140. All appealed CBSA enforcement actions, whether made by a CBSA officer, Investigations, or the RCMP must be reported immediately to the Director General (Recourse Directorate) under section 128 of the *Customs Act*.
141. Reports should deal with the specifics of a seizure and not contain any personal comments.
142. Officers are encouraged to take an active role in the adjudications process and to supply additional comments and evidence in matters, where a request has been made to do so by the adjudicator or where the officer feels it is required.
143. It is imperative that the seizing officer review all submissions made by the public and all correspondence sent out by the Recourse Directorate.
144. Officers must treat appeals received with concern and immediate attention.
145. Officers will treat any objection or enquiry concerning a seizure as an appeal. However, the objection or enquiry must be in writing.

Note: Clients have 90 days after the date of seizure or of service of a notice served pursuant to section 129 of the *Customs Act* in which to request a Minister's decision on the validity of the enforcement action.

146. Officers will not accept late claims as valid appeals, but will acknowledge receipt and forward it to the Recourse Directorate for their consideration
147. When a claim is in respect of goods that have been disposed of for any reason, the Recourse Directorate must be notified immediately. If the seizure is not upheld, and should the client want to take release of the seized goods, the CBSA must compensate the client for the goods in accordance with the applicable procedures for lost or damaged goods. Where a contravention has been upheld following an appeal and the goods have been inadvertently disposed of or sold off, the client is to be compensated for the value of the goods less the amount of the terms of release.

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148. Officers, superintendents, and managers must ensure that as soon as possible after receipt the following are forwarded to the Recourse Directorate:
- a) original appeals;
 - b) copies of acknowledgements;
 - c) comments of officers involved concerning all the points raised in a claim;
 - d) whatever other comments superintendents or managers may deem appropriate;
 - e) originals of any correspondence received on CBSA seizures;
 - f) clear copies of any letters of criticism, including complaints against officers dealing with a seizure action;
 - g) reports resulting from the investigation of complaints; and
 - h) anything that may appear to be a claim from a lien-holder or third party interest pursuant to section 138 of the *Customs Act*.
149. Cases will be held open until the seizing CBSA office is notified of a ministerial decision and, where applicable, the Recourse Directorate issues subsequent instructions concerning disposition of any goods remaining on hand.
150. Where an appeal is filed or a case is being held open for further investigation or other reasons, disposition of goods remaining on hand and the closing of cases must be withheld pending notification (e.g. third party orders, Federal Court Appeals).
- Note: From the time an appeal and/or third party claim is received, the case becomes the responsibility of the Recourse Directorate under the provisions set out in sections 129 to 141 of the *Customs Act*.

REFERENCES

151. *Customs Act*
Customs Tariff Act
 ICES User Reference Manual
Controlled Drugs and Substances Act

CUSTOMS ENFORCEMENT MANUAL

Part 5

ENFORCEMENT ACTIONS – GOODS, DOCUMENTS, EVIDENCE, AND CONVEYANCES

Chapter 3

***CRIMINAL CODE* – SEIZURE OF EVIDENCE AND GOODS**

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to seize goods under the authority of subsection 489(2) of the *Criminal Code* in accordance with the following policy and procedures.

DEFINITIONS

2. Refer to “Chapter 11 - Glossary”.

AUTHORITIES

Criminal Code

3. Subsection 489(2) – authorizes designated CBSA officers, while conducting their normal duties, to seize without a warrant anything that they believe on reasonable grounds:
 - a) has been obtained by the commission of an offence against this or any other act of Parliament;
 - b) has been used in the commission of an offence against this or any other act of Parliament; or
 - c) will afford evidence in respect of an offence against this or any other act of Parliament.

PURPOSE AND SCOPE

4. The purpose of this policy is to provide guidelines for the seizure of goods pursuant to subsection 489(2) of the *Criminal Code*.
5. This policy applies to all CBSA personnel.

BACKGROUND

6. Certain federal statutes contain provisions that make it an offence for a person to import, export, or possess certain goods. These types of statutory provisions address the behaviour of the person (*in personam*). They do not, however, prohibit, control, regulate, or otherwise provide any manner in which the goods themselves are to be dealt with.

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Criminal Code – Seizure of Evidence and Goods

7. Provisions that prohibit, control, and regulate goods are called *in rem* provisions. CBSA officers can only detain goods under authority of section 101 of the *Customs Act* when the statutory provision is *in rem*. Officers are unable to detain goods under the *Customs Act* in those cases where the statute only creates an *in personam* offence.
8. When there is evidence of a criminal offence under the *Customs Act*, officers may seize evidence under section 110(3). Officers should consult with Investigations before taking seizure action.
9. When goods are in compliance with the *Customs Act* but have been obtained, used, or are evidence of the commission of an offence under any other act of Parliament, CBSA officers have the authority to seize goods under subsection 489(2) of the *Criminal Code* where the statutory provision is *in personam*. Such as:
 - a) importing goods obtained by crime (*Criminal Code* s. 357), (e.g. stolen property);
 - b) importing instruments for forging or falsifying credit cards (*Criminal Code*, subsection 342.01);
 - c) importing counterfeit money (*Criminal Code*, section. 450);
 - d) importing gaming machines (*Criminal Code*, section 202);
 - e) forging a trade-mark with intent to deceive (*Criminal Code*, section 407).

POLICY GUIDELINES

10. The primary responsibility of all CBSA officers remains the enforcement and application of the *Customs Act* and its regulations as well as the laws of other government departments (OGDs) for which it has responsibility.
11. The *Customs Act* will take precedent over the *Criminal Code* in matters dealing with *in personam* offences concerning the importation, exportation, or possession of imported/exported goods.
12. The completion of customs processes may be suspended, if action under the *Criminal Code* is considered.

Note: For example, the goods are in compliance with the *Customs Act*, but duties and taxes have not yet been collected.

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Criminal Code – Seizure of Evidence and Goods

13. Travellers' goods that are not in compliance with the *Customs Act* may be seized under the *Customs Act*.
14. Commercial goods that are not in compliance with the *Customs Act* should be dealt with in accordance with AMPS policy.

Note: Refer to Part 5, Chapter 1, Commercial Seizures, Ascertained Forfeitures and Administrative Monetary Penalties Policy and Procedures.

15. Goods seized under the *Customs Act* that are to be used as evidence of an offence under another act must remain under customs documentary control at all times.
16. Officers will refer, with the exception of drugs (including cannabis), all incidents of smuggling or fraud under the *Customs Act* to Investigations through the Regional Intelligence Officer (RIO) unless otherwise indicated in a local standard operating procedure (SOP).

Note: Refer to Part 9, Chapter 1, Customs Prosecution Policy, and Part 9, Chapter 2, Customs Prosecution Procedures.

17. Action under subsection 489(2) of the *Criminal Code* will normally be taken when there is clear and concise information received from the RCMP and/or OGD, which states the nature of the offence, provides sufficient information to identify the shipment and the RCMP and/or OGD is willing to lay a charge in relation to the act.

Note: This policy does not apply to goods that are evidence of an offence for which an individual has been arrested. In these cases, the evidence obtained is incidental to the arrest.

18. Goods that are clearly in contravention of OGD legislation may be seized under subsection 489(2) of the *Criminal Code* when there is no prior intelligence information if, prior to actual seizure, a RIO consults with the RCMP and they are willing to take possession of the goods if a seizure is made, and are willing to lay a charge in relation to the contravention.

Note: Based on information received from the RCMP, the final decision to seize will be made by the customs officer.

19. Officers will advise the importer/owner when goods are seized under subsection 489(2) of the *Criminal Code* and inform the importer/owner of the goods being seized, the legislative authority contravened and the allegation.
20. The RCMP and/or OGD will be responsible for the storage and handling of all goods seized under subsection 489(2) of the *Criminal Code*.

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Criminal Code – Seizure of Evidence and Goods

21. In cases where the RCMP or other police force cannot take immediate custody of seized goods, they will be responsible for any storage costs incurred by the CBSA.
22. The RCMP and/or OGD will be responsible for reporting the seizure to the court in accordance with subsection 489.1 of the *Criminal Code*.
23. Goods seized under subsection 489(2) of the *Criminal Code* will remain subject to customs duties and controls and must be returned to customs for accounting and payment of applicable duties and taxes unless the court orders them forfeit and condemned for destruction or to be exported.

Working with Other Police Forces

24. In agreement with the RCMP, the CBSA may enter into arrangements with provincial or municipal police forces to take custody of goods seized under subsection 489(2) of the *Criminal Code*.

Note: This only applies to offences of the *Criminal Code* and not to offences of any other federal or provincial statute.

Note: This does not apply to joint forces operations (JFO's) that are conducted between the CBSA and other police forces.

25. In the absence of local arrangements, all subsection 489(2) of the *Criminal Code* matters will be referred to the RCMP through the appropriate RIO.
26. Referrals to the police or to OGD's are considered disclosures of customs information pursuant to section 107 of the *Customs Act*. These disclosures must be made in accordance with the procedures described in the Policy on the Disclosure of Customs Information: Section 107 of the *Customs Act*.

Intelligence Based Seizures

27. For subsection 489(2) of the *Criminal Code* intelligence-based seizures to be carried out, intelligence information must have been received by an RIO from the RCMP or an OGD.
28. Officers will ensure that the appropriate RIO is informed immediately when information is received directly by district or port staff from the RCMP or an OGD.

Note: The RIO will then contact the involved RCMP or OGD office for verification and further information.

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Criminal Code – Seizure of Evidence and Goods

29. Officers will not take action on a subsection 489(2) of the *Criminal Code* occurrence prior to making contact with the appropriate RIO.
30. Information received from the RCMP or an OGD must include:
 - a) the section of the federal statute being contravened;
 - b) a clear description of the goods;
 - c) the specific justification for seizing the goods; and
 - d) a clear indication from the RCMP that they will charge the individual.
31. When an RIO receives information directly from an OGD, they must contact the RCMP prior to taking any action to ensure they are aware of the situation and will accept responsibility for the goods once they are seized.
32. Although intelligence information will be provided by the RCMP or an OGD, customs officers will only seize goods under authority of subsection 489(2) of the *Criminal Code* when they **believe on reasonable grounds** the goods have been obtained by, or used in, the commission of a criminal offence or will afford evidence of a criminal offence that has been committed or is being committed. Officers will document their reasonable grounds in their notebook.
33. Although based on information received by the RCMP, the final decision to seize will be that of the customs officer.
34. CBSA officers will not delay the release of shipments and/or conduct examinations for the sole purpose of determining whether goods are evidence of a criminal offence. A lookout on a particular commodity, which may include guidelines in the form of indicators, provided by the RCMP, an OGD or other police service, is to be considered for informational purposes only.
35. Officers may conduct examinations at their own discretion and subject to operational requirements when the RCMP, OGD, or other police force have given specific direction as to a quantity they are interested in for prosecution purposes and have expressed a willingness to take action if such goods are identified, or they have provided other specific information such as the name of a particular offending importer which allows shipments to be specifically targeted.

ROLES AND RESPONSIBILITIES

Border Services Officers

36. Border Services Officers are responsible for:

- a) ensuring these policy and procedure guidelines are followed;
- b) contacting the regional intelligence officer (RIO) before seizing goods under the authority of subsection 489(2) of the *Criminal Code*; and
- c) ensuring goods seized under subsection 489(2) of the *Criminal Code* are documented and turned over to the RCMP and when necessary, stored safely.

Managers and Superintendents

37. Managers and superintendents are responsible for:

- a) ensuring compliance with these policy and procedure guidelines; and
- b) ensuring the required communication takes place between the district/port office and the RIO.

Regional Intelligence Officers

38. Regional intelligence officers are responsible for:

- a) ensuring policy and procedure guidelines are followed;
- b) contacting Investigations;
- c) ensuring that lookouts are issued, maintained, and removed, as required; and
- d) working with Investigations, local police or RCMP, OGDs, and other enforcement agencies to ensure cooperation with the terms of this policy including the eventual return of the goods to customs unless they are otherwise disposed of in an acceptable manner.

Investigations

39. Criminal Investigators are responsible for:

- a) acknowledging receipt of all referrals received;
- b) conducting investigations and considering prosecutions related to offences under the *Customs Act*, *Customs Tariff Act*, *Export and Import Permits Act*, *Cultural Properties Act*, and other acts that control the import and export of goods;
- c) working with RIO's, the RCMP and other enforcement agencies to identify opportunities for joint investigations/prosecutions on a case-by-case basis, whether the goods were seized under the *Customs Act* or *Criminal Code*;
- d) consulting with the Department of Justice to determine whether a prosecution is warranted; and
- e) advising the referring agency of the status of the investigation.

Enforcement and Intelligence Operations

40. Enforcement and Intelligence Operations is responsible for:

- a) monitoring compliance with this policy and procedures;
- b) receiving feedback and recommendations from the field and addressing concerns; and
- c) developing and maintaining appropriate policy as required.

PROCEDURES

- 41. Take control of the goods and document all actions you have taken to maintain the continuity of the evidence.
- 42. Follow procedures as outlined in Part 6, Chapter 7, Criminal Code Offences for processing persons suspected of being in possession of property obtained by crime. The Exhibit Control Form (K129), used for transferring the goods to the appropriate police force, is attached as Appendix A. Also the Evidence Seizure Receipt (E352), used to identify seized goods, is attached as appendix B.

EN Part 5 Chapter 3

Criminal Code – Seizure of Evidence and Goods

43. Normally, the RCMP and/or OGD is responsible for reporting the seizure to the court in accordance with subsection 489(1) of the *Criminal Code*.

Note: In British Columbia the CBSA reports the seizure to the court.

44. When the criminal prosecution has been completed, acquit the entry by:
- a) the normal accounting process;
 - b) a written notice from the RCMP that the goods have been destroyed;
 - c) a written notice from the RCMP that the goods have been exported; or
 - d) a notice that the courts have ordered the goods forfeit.

REFERENCES

45. *Customs Act*
Customs Tariff
Criminal Code of Canada
Trademarks Act
ICES User Reference Manual

Part 5

**ENFORCEMENT ACTIONS – GOODS, DOCUMENTS, EVIDENCE, AND
CONVEYANCES**

Chapter 3

***CRIMINAL CODE* – SEIZURE OF EVIDENCE AND GOODS**

Appendix A

EXHIBIT CONTROL FORM (K129)

Part 5

**ENFORCEMENT ACTIONS – GOODS, DOCUMENTS, EVIDENCE, AND
CONVEYANCES**

Chapter 3

***CRIMINAL CODE* – SEIZURE OF EVIDENCE AND GOODS**

Appendix B

EVIDENCE SEIZURE RECEIPT (E352)

EN Part 5 Chapter 3

Criminal Code – Seizure of Evidence and Goods

APPENDIX B

	Canada Border Services Agency Agence des services frontaliers du Canada	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Evidence seizure rec. - N° du reçu de la preuve</td> </tr> <tr> <td style="padding: 2px;">K19 ref. no. - N° de réf. de la K19</td> </tr> <tr> <td style="padding: 2px;">Office - Bureau</td> </tr> <tr> <td style="padding: 2px;">Date (Y-M-D) - (J-M-A)</td> </tr> <tr> <td style="padding: 2px;">J.C.S. no. - N° de la C.M.B.</td> </tr> </table>	Evidence seizure rec. - N° du reçu de la preuve	K19 ref. no. - N° de réf. de la K19	Office - Bureau	Date (Y-M-D) - (J-M-A)	J.C.S. no. - N° de la C.M.B.	
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K19 ref. no. - N° de réf. de la K19								
Office - Bureau								
Date (Y-M-D) - (J-M-A)								
J.C.S. no. - N° de la C.M.B.								
EVIDENCE SEIZURE RECEIPT - REÇU DE SAISIE DE LA PREUVE								
<p>PROTECTED WHEN COMPLETED</p> <p><u>Note</u> - The information on this form is collected to enforce the law, especially as it concerns the laws relating to the importation and exportation of goods and is protected under the provisions of the Privacy Act. The form is also a personal information bank, Customs Intelligence Records record no. CCRS PPU 015.</p>	<p>PROTÉGÉ LORSQUE REMPLI</p> <p><u>Note</u> - Les renseignements que contiennent ce formulaire sont recueillis dans le but d'appliquer la loi, principalement les lois ayant trait à l'importation et l'exportation des marchandises et sont protégés par les dispositions de la Loi sur la protection des renseignements personnels. Le formulaire est contenu dans le fichier de renseignements personnels concernant les registres de la division des renseignements n° CCRS PPU 015.</p>							
<table style="width: 100%;"> <tr> <td style="width: 50%;">Surname - Nom de famille</td> <td style="width: 50%;">Given name - Prénom</td> </tr> <tr> <td colspan="2" style="height: 100px; vertical-align: top;">Address - Adresse</td> </tr> <tr> <td colspan="2" style="height: 100px; vertical-align: top;">Statement of existence - Déclaration de provenance</td> </tr> </table>			Surname - Nom de famille	Given name - Prénom	Address - Adresse		Statement of existence - Déclaration de provenance	
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Address - Adresse								
Statement of existence - Déclaration de provenance								
<table style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> The goods described have been seized under section 110(3) of the Customs Act, as it is believed on reasonable grounds that the goods will afford evidence in respect of a contravention of the Customs Act or the regulations. </td> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> Les marchandises décrites ont été saisies en vertu de l'article 110(3) de la Loi sur les douanes puisqu'il est soupçonné, pour des motifs raisonnables, qu'elles contiennent des éléments de preuve par rapport à une infraction à la Loi sur les douanes ou au règlement annexé. </td> </tr> <tr> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> The goods described have been seized under section 489(2) of the Criminal Code, as it is believed on reasonable grounds that the goods will afford evidence in respect of an offence against the Criminal Code or any other Act. </td> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> Les marchandises décrites ont été saisies en vertu de l'article 489(2) du Code criminel puisqu'il est soupçonné, pour des motifs raisonnables, qu'elles contiennent des éléments de preuve par rapport à une infraction au Code criminel ou toute autre loi du Parlement. </td> </tr> </table>			<input type="checkbox"/> The goods described have been seized under section 110(3) of the Customs Act, as it is believed on reasonable grounds that the goods will afford evidence in respect of a contravention of the Customs Act or the regulations.	<input type="checkbox"/> Les marchandises décrites ont été saisies en vertu de l'article 110(3) de la Loi sur les douanes puisqu'il est soupçonné, pour des motifs raisonnables, qu'elles contiennent des éléments de preuve par rapport à une infraction à la Loi sur les douanes ou au règlement annexé.	<input type="checkbox"/> The goods described have been seized under section 489(2) of the Criminal Code, as it is believed on reasonable grounds that the goods will afford evidence in respect of an offence against the Criminal Code or any other Act.	<input type="checkbox"/> Les marchandises décrites ont été saisies en vertu de l'article 489(2) du Code criminel puisqu'il est soupçonné, pour des motifs raisonnables, qu'elles contiennent des éléments de preuve par rapport à une infraction au Code criminel ou toute autre loi du Parlement.		
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Seizing officer - Agent responsable de la saisie	Badge no. - N° de l'insigne							
RETURN OF EVIDENCE - RENVOI DE LA PREUVE								
<p>The above evidence has returned on - Les preuves susmentionnées ont été renvoyées le</p> <table style="width: 100%;"> <tr> <td style="width: 50%; text-align: center;">Date</td> <td style="width: 50%; text-align: center;">Location - Endroit</td> </tr> <tr> <td style="width: 50%; text-align: center;">Person to whom returned - Personne à qui a été renvoyé la preuve</td> <td style="width: 50%; text-align: center;">Customs officer - Agent des douanes</td> </tr> </table>			Date	Location - Endroit	Person to whom returned - Personne à qui a été renvoyé la preuve	Customs officer - Agent des douanes		
Date	Location - Endroit							
Person to whom returned - Personne à qui a été renvoyé la preuve	Customs officer - Agent des douanes							
<div style="display: flex; justify-content: space-between;"> E352 (04/10) CBSA COPY - EXEMPLAIRE DE L'ASFC  </div>								

ENFORCEMENT MANUAL

Part 5

ENFORCEMENT ACTIONS – GOODS, DOCUMENTS EVIDENCE AND CONVEYANCES

Chapter 4

AGRICULTURE AND AGRI-FOOD ADMINISTRATIVE MONETARY PENALTIES (AAAMPS) FOR TRAVELLERS

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POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to use the Agriculture and Agri-food Administrative Monetary Penalty System (AAAMPS) as an efficient, fair and transparent alternative to prosecution, and as a supplement to existing enforcement measures, for persons who fail to declare or provide proper import documentation for food, plant and animal (FPA) products when importing such goods into Canada.

Note: For guidance on confiscating FPA products and issuing an AAAMP under CFIA legislation, border services officers should refer to the *Agriculture and Agri-Food Administrative Monetary Penalties (AAAMPs) Processing Manual (APM)*. If seizing FPA products for contraventions of the *Customs Act*, BSOs should refer to Part 5, Chapter 2, Traveller Seizures and Ascertained Forfeitures - *Enforcement Manual - Traveller Seizures*.

DEFINITIONS

2. Refer to Part 11 – Glossary for other definitions.

“AAAMP” means Agriculture and Agri-Food Administrative Monetary Penalty.

“AAAMP Act” means *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

“Animal” includes mammals, birds, turtles, tortoises, honeybees, embryos and fertilized eggs or ova.

“Animal by-product” includes all parts of a bird or mammal, including blood or any of its components, bones, bristles, feathers, flesh, hair, hides, hoofs, horns, offal (organs), skins and wool, and anything containing any of those things (*except a member of the orders Rodentia, Cetacea, Pinnipedia and Sirenia*).

“Animal product” includes products derived from a bird or mammal, including cream, eggs, milk, non-fertilized ova and semen (*except a member of the orders Rodentia, Cetacea, Pinnipedia and Sirenia*).

“AIRS” refers to the Canadian Food Inspection Agency's (CFIA) Automated Import Reference System. AIRS is a searchable database containing current CFIA importation requirements for food, plant and animal products. AIRS is available online.

“Egg product” means any of the following, namely, whole egg, egg shells, egg yolk, egg albumen or any mix of these, in a liquid, dried, frozen or fresh form.

“FPA product” means an animal, a plant, or an animal or plant product, or a product, including any food or drink, wholly or partly derived from an animal or a plant.

“Milk product” means any of the following, namely, partly-skimmed milk, skim milk, cream, butter, buttermilk, butter oil, whey, whey butter or whey cream, in concentrated, dried, frozen or reconstituted or fresh form, but does not include milk proteins, milk sugars and milk enzymes.

“NOV with Penalty” is a notice of violation issued to a non-compliant traveller that sets out a penalty, as defined in Section 9 of the *AAAMPA*.

“NOV with Warning” is a notice of violation issued to a non-compliant traveller that contains a warning, as defined in Section 8 of the *AAAMPA*.

“Pest” means any thing that is injurious or potentially injurious, whether directly or indirectly, to plants or to products or by-products of plants.

“Phytosanitary Certificate” means a document, issued by the government of the country of origin of a thing that attests to the phytosanitary status of the thing.

“Plant” includes all parts of a plant (e.g. roots, bark, leaves, flowers).

“Presentation” for the purposes of enforcing the *AAAMP Act*, means a declaration of imported FPA goods (verbally or in writing) or making the goods available for inspection.

“Thing” includes a plant and a pest.

AUTHORITIES

Agriculture and Agri-Food Administrative Monetary Penalties Act

3. Subsection 7 (2) states that if a designated person (Border Services Officer) has reasonable grounds to believe that a person has committed a violation, the designated person may issue a notice of violation that names the person, identifies the violation and (a) contains a warning that the person has committed a violation; (b) sets out the penalty, established in accordance with the regulations, for the violation that the person is liable to pay, particulars concerning the time for paying and the manner of paying the penalty, and subject to the regulations, a lesser amount that may be paid in complete satisfaction of the penalty if paid within the time and

manner specified in the notice. A notice of violation must clearly summarize, in plain language, the rights and obligations under this Act of the person on whom it is served, including the right to have the facts of the violation reviewed by the Minister or the Tribunal, and the procedure for requesting such a review.

4. Section 22 states that where a person is deemed to have committed a violation, anything seized and detained under an *Agri-food Act* in relation to the violation is immediately forfeited to the Crown and may be disposed of, at the expense of the person from whom it was seized, in accordance with the regulations made under the applicable *agri-food Act* unless the Minister directs otherwise.
5. Section 26 states that no notice violation may be issued later than 6 months after the day on which the infraction was committed, in the case of a minor violation, or two years after the day on which the infraction was committed, in the case of a serious violation or a very serious violation.

Health of Animals Act

6. Subsection 16 (1) states that where a person imports into Canada any animal, animal product, animal by-product, animal food or veterinary biologic, or any other thing used in respect of animals or contaminated by a disease or toxic substance, the person shall, either before or at the time of importation, present the animal, animal product, animal by-product, animal food, veterinary biologic or other thing to an inspector, officer or CBSA officer who may inspect it or detain it until it has been inspected or otherwise dealt with by an inspector or officer.
7. Section 17 states that if the Minister determines that an animal or thing has been imported — or an attempt has been made to import an animal or thing — in contravention of this Act or the regulations or that a requirement in respect of an imported animal or thing has not been met, it is forfeited to Her Majesty in right of Canada and may be disposed of as the Minister may direct.
8. Subsection 18 (1) states that an inspector or officer who has reasonable grounds to believe that an imported animal or thing has been imported in contravention of this Act or the regulations, is or could be affected or contaminated by a disease or toxic substance or is a vector or that a requirement imposed by or under the regulations in respect of an imported animal or thing has not been met may, by notice, whether the animal or thing is seized or not, order its owner or importer or the person having possession, care or control of it to remove it from Canada or, if removal is not possible, to dispose of it.

Health of Animals Regulations

9. Subsection 34(1) states that no person shall import milk or milk products into Canada from a country other than the United States, unless (a) the country or part of the country is designated as free of foot and mouth disease, and b) the person produces a certificate of origin signed by an official of the government of the country of origin.
10. Subsection 34 (2) states that no person shall import unfertilized bird eggs or egg products into Canada from a country other than the United States, unless (a) the country of origin or part of such a country is designated as free of avian pneumoencephalitis (Newcastle disease) and fowl plague, (b) the person produces a certificate of origin signed by an official of the government of the country of origin, and (c) the eggs are packed in containers that are clean and free from dirt and residue of eggs.
11. Section 40 states that no person shall import into Canada an animal by-product, manure or a thing containing an animal by-product or manure except in accordance with Part IV of the *Health of Animal Regulations*. The exceptions under Part IV include presenting the by-product to an officer for inspection and/or producing a certificate or permit, or other required documentation, to an officer who determines that the importation of the by-product would not be likely to result in the introduction into Canada of any reportable disease.

Plant Protection Act

12. Section 7 states that no person shall import or admit into Canada or export from Canada any thing that is a pest, that is or could be infested with a pest or that constitutes or could constitute a biological obstacle to the control of a pest, unless the person has produced to an inspector all permits, certificates and other documentation required, or, the thing is or has been presented to an inspector.
13. Subsection 8 (1) states that an inspector who has reasonable grounds to believe that an imported thing has been imported in contravention of a provision of this Act or the regulations, is a pest, is or could be infested with a pest or constitutes or could constitute a biological obstacle to the control of a pest or that a requirement imposed by or under the regulations in respect of an imported thing has not been met may, by notice, whether the thing is seized or not, order its owner or importer or the person having possession, care or control of it to remove it from Canada or, if removal is not possible, to destroy it.

Plant Protection Regulations

14. Subsection 29(1) states that no person shall import into Canada any thing that is a pest, is or could be infested or constitutes or could constitute a biological obstacle to the control of a pest, unless the person has obtained and furnished to an inspector a valid permit number and, as applicable, a foreign Phytosanitary Certificate or a foreign Phytosanitary Certificate for Re-export.
15. Section 39 states that every person shall, at the time of importation into Canada of any thing that is a pest, is or could be infested or constitutes or could constitute a biological obstacle to the control of a pest, declare that thing to an inspector at a point of entry.

Canadian Food Inspection Agency Act

16. Subsection 11 (5) states that the CBSA is responsible for the enforcement of the program legislation referred to in paragraph (b) of the definition "program legislation" in section 2 of the *Canada Border Services Agency Act* as that program legislation relates to the delivery of passenger and initial import inspection services performed at airports and other Canadian border points other than import service centres.

Canada Border Services Agency Act

17. Subsection 9(2) grants the CBSA the power to designate BSOs authority to exercise any powers or perform any duties and functions of an officer under that Act, or as an inspector or a veterinary inspector or other officer for the enforcement of any Act or instrument made under it, or any part of an Act or instrument, that the Governor in Council or Parliament authorizes the Minister, the Agency, the President or an employee of the Agency to enforce, including the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, the *Canada Agricultural Products Act*, the *Feeds Act*, the *Fertilizers Act*, the *Fish Inspection Act*, the *Health of Animals Act*, the *Meat Inspection Act*, the *Plant Protection Act* and the *Seeds Act*.

Agriculture and Agri-Food Administrative Monetary Penalty Act

18. Section 3 states that the purpose of this Act is to establish, as an alternative to the existing penal system and as a supplement to existing enforcement measures, a fair and efficient administrative monetary penalty system for the enforcement of the agri-food Acts.

Agriculture and Agri-Food Administrative Monetary Penalties Regulations

19. Schedule 1 lists the short-term description of possible violations to the *Health of Animals Act*, the *Plant Protection Act* and their respective Regulations and classifies the severity thereof.

PURPOSE AND SCOPE

20. The purpose of this policy is to outline the CBSA's policy with regards to the interception of FPA products and the application of AAAMPs.
21. This policy applies to all border services officers in all modes of transportation. However, it may only be enforced by officers who have been given access to issue AAAMPs in the Integrated Customs Enforcement System (ICES) and have taken the online course entitled "Agriculture and Agri-Food Administrative Monetary Penalties for Travellers".

BACKGROUND

22. In 2003, the Canada Border Services Agency (CBSA) assumed responsibility for the initial import inspection services in respect of 9 of the 13 acts and regulations administered by the Canadian Food Inspection Agency (CFIA) to the extent that they are applicable at Canadian border points. The CFIA retains responsibility for the enforcement of these Acts and Regulations to the extent they apply within Canada and at its Import Service Centers (ISCs).
23. One of the responsibilities of the CBSA in enforcing the CFIA legislation is the issuance of AAAMPs under the *Agriculture and Agri-Food Administrative Monetary Penalties Act* (AAAMPA) for importer non-compliance.
24. AAAMPs provide border services officers with an efficient, fair and transparent enforcement mechanism to address importer non-compliance where a person has:
- failed to present¹ FPA products; or
 - failed to present prescribed documentation for FPA products upon entry into Canada.

¹ "Presentation" for the purposes of enforcing the AAAMP Act, means a declaration of imported FPA goods (verbally or in writing) or making the goods available for inspection.

25. Similar to other customs AMPs, the AAAMPs provide the Agency with an effective means to deter importer non-compliance. These penalties are designed to be a remedial/corrective rather than punitive enforcement tool.
26. Under the CFIA legislation, the CBSA has the option to address importer non-compliance with a written warning, a monetary penalty, confiscation of the product(s) or even prosecution in certain instances.

ROLES AND RESPONSIBILITIES

27. Border Service Officers are responsible for:
 - a) detecting and intercepting FPA products and their by-products;
 - b) determining whether the FPA products are declared and whether they are admissible into Canada;
 - c) determining whether the FPA products require documentation (e.g. certificate or permit) for importation;
 - d) possessing a general awareness of FPA products and knowing where to locate detailed information;
 - e) referring FPA products to other government departments (OGDs) where required;
 - f) assessing whether an AAAMP with warning or penalty should be issued;
 - g) interviewing relevant witnesses;
 - h) completing necessary forms;
 - i) gathering, and protecting all evidence, including photographs and physical exhibits;
 - j) issuing AAAMPs; and
 - k) maintaining a complete file at the point of entry.
28. CBSA Superintendents are responsible for:
 - a) ensuring compliance with this policy and the AAAMPS Processing Manual;

- b) providing the necessary assistance and support to BSOs; and
 - c) ensuring the timely circulation of all intelligence reports, lookouts, alerts and targets.
29. Regional Operations is responsible for:
- a) Facilitating the exchange of timely information or intelligence concerning individuals suspected of importing undeclared FPA products; and
 - b) Liaising with other agencies involved in regulating the import of FPA products.
30. Headquarters Commercial Programs Branch, Importer and Exporter Compliance Unit, is responsible for providing guidance in the application of AAAMPs.
31. Headquarters Enforcement and Intelligence Operations, Criminal Investigations Division, is responsible for providing guidance related to prosecutions.

POLICY GUIDELINES

32. **All FPA products²** must be declared to the CBSA before or at the time of importation into Canada. Travellers who fail to declare any FPA product verbally or in writing, or make the goods physically available for inspection to an officer at the time of entry, may be subject to an AAAMP.
33. In addition to the obligation to declare goods, travellers importing certain FPA products may also require prescribed documentation (certificates/permits) in order to be compliant with the law. Persons who fail to provide such prescribed documentation in these cases may also be subject to an AAAMP (see Key Allegations section).
34. The amount of the penalty for a violation that is committed by an individual, other than in the course of business or to obtain a financial benefit, is:
- (a) \$500, for a minor violation;
 - (b) \$800, for a serious violation; and

² "FPA product" means an animal, a plant, or an animal or plant product, or a product, including any food or drink, wholly or partly derived from an animal or a plant.

(c) \$1300, for a very serious violation.

THRESHOLD FOR ISSUING AN AAAMP

35. The AAAMP regime is an absolute liability regime, which means that a penalty can be imposed solely upon the determination that a violation has occurred. There is no minimum threshold established by law for the initiation of an enforcement action under the AAAMP regime, nor is there is a need to demonstrate that the person who is responsible acted intentionally or negligently.
36. Notwithstanding, an AAAMP may not be warranted or practical in all instances. It is recommended that BSOs use their discretion before proceeding with such an enforcement action. A BSO should always carefully assess the circumstances surrounding the violation before determining if a Notice of Violation (NOV) with Warning or Penalty should be issued, or if a verbal warning will suffice.
37. Where it is determined that an NOV should be issued, the CBSA's policy is generally not to seek monetary penalty for a first violation, but to only impose a NOV with Penalty for subsequent violations to deter further non-compliance. As such, in instances of a first violation, a BSO should consider issuing a NOV with Warning, or if an NOV with Warning is not warranted/practical, a verbal warning, which will help educate the traveller on the importance of declaring FPA products being imported into Canada.
38. In light of the substantial fines imposed, it is also not the CBSA's policy to issue numerous NOV's with Penalty for the same infraction (e.g., importation of multiple animal and/or plant products), whether under the same act or different acts. Issuing multiple NOV's with Penalty should be reserved for instances where there is a clear attempt to contravene the law and that a strong deterrent effect is needed. In most cases, issuing a penalty for the worst contravention is sufficient.
39. Mitigating factors that may warrant the issuance of a verbal warning, or a NOV with Warning, instead of a Penalty in a first or subsequent violation include:
 - Age of the violator (accompanied minor)
 - Inability to understand or communicate (linguistic, mental or physical incapacity)
 - Cooperative or remorseful behavior
 - Exercise of diligence to be compliant with the law

- Low-risk FPA product
 - Situational demands
40. It is important to note that a verbal warning will often be sufficient where numerous mitigating factors are present – particularly in cases where there is no apparent intent to contravene the law. A NOV with Warning should, however, be considered in all instances where the BSO determines that a record of the infraction is needed in ICES to assist the CBSA in detecting previous traveller non-compliance in future border crossings.
41. In instances where sufficient aggravating factors are present in a first or subsequent violation, a BSO can and should, where practical, issue a NOV with Penalty for the violation. Aggravating factors may include:
- Previous FPA infractions
 - Multiple contraventions are present
 - Intent/Concealment
 - Uncooperative or unremorseful behavior (or other signs that the traveller will reoffend)
 - High-risk FPA product
42. Most traveller AAAMPs issued by the CBSA are either serious (\$800 penalty) or very serious (\$1300 penalty). These penalty amounts are substantial and are legislated under the *AAAMP Act*. Once the penalty is issued it cannot be changed or cancelled for any reason by the BSO. BSOs should, therefore, carefully consider the mitigating and aggravating factors of an infraction before determining whether or not to issue a penalty.
43. This policy also recognizes that there are instances where the seriousness of the offence and the evidence of intent on the part of the traveller are significant enough to consider prosecution (e.g. concealment in a hidden compartment in luggage or on a person). In these instances the BSO's superintendent should contact their local investigation divisions to discuss the particulars of the file before proceeding with issuing a NOV with Penalty.
44. Travellers cannot be served both an AAAMP and be prosecuted for a contravention of the legislation enforced by the *AAAMP Act* (e.g., *Health of Animals Act*). The only instance where an AAAMP and prosecution may be done is when another piece of legislation comes into play. For instance, the CBSA could issue an AAAMP under the *AAAMP Act* and also prosecute under the *Customs Act* for non-report, false statement or smuggling.

45. For further information on criminal prosecution, please refer to Part 6 Chapter 1, and Part 9 Chapter 2.

KEY ALLEGATIONS

Subsection 16(1) of Health of Animals Act

46. The allegation of failure to present should be used for an AAAMP against a traveller who has not declared an animal, animal product or animal by-product upon arrival to Canada either in writing or verbally, or has not otherwise made the good available for inspection by the CBSA.

Paragraph 34(1)(b) of the Health of Animals Regulations

47. The allegation of failure to provide a certificate for milk or a milk product should be used for an AAAMP against a traveller who has not presented a certificate for imported milk or a milk product from a country other than the United States that shows that is designated as free of foot and mouth disease.

Paragraph 34(2)(b) of the Health of Animals Regulations

48. The allegation of failure to provide a certificate for an unfertilized bird egg or egg product should be used for an AAAMP against a traveller who has not presented a certificate for an unfertilized bird egg or egg product from a country other than the United States that shows that it is designated as free of avian pneumoencephalitis (Newcastle disease) and fowl plague.

Section 40 of the Health of Animals Regulations

49. The allegation of importing an animal by-product without meeting the prescribed requirements should be used for an AAAMP against a traveller who has imported an animal by-product (e.g. animal flesh, organs, bones, feathers, hair, skin/wool, etc.) or manure, without meeting the prescribed requirements under Part IV of the *Regulations*.
50. Prescribed requirements of Section 40 include:
- (1) production of a certificate, permit, or other documentation, and
 - (2) presentation of the imported by-products to an officer.
51. Fulfilling either of these requirements exempts a traveller from section 40, which prohibits the importation of all animal by-products. A traveler can also be exempt from section 40 if the country of origin of the by-product is the

United States and the by-product is not derived from an animal of the subfamily Bovinae (beef, bison, etc.) or Caprinae (goat, lamb, etc.).

Section 7 of the Plant Protection Act

52. The allegation of failure to present a thing should be used for an AAAMP against a traveller who has imported or exported any thing that is a pest or could be infested by a pest without declaring it to an officer either in writing or verbally, or has not otherwise made the good available for inspection by the CBSA.

Subsection 29(1) of the Plant Protection Regulations

53. The allegation of failure to present a permit number or a foreign Phytosanitary Certificate should be used for an AAAMP against a traveller who has imported any thing that is a pest or could be infested by a pest without presenting a valid permit number or foreign Phytosanitary Certificate.

Section 39 of the Plant Protection Regulations

54. The allegation of failure to declare should be used for an AAAMP against a traveller who has imported any thing that is a pest or could be infested by a pest without declaring it to an officer either in writing or verbally, or has not otherwise made the good available for inspection by the CBSA.
55. A BSO who determines an AAAMP should be issued for a contravention of any other legislative provision of the *Health of Animals Act* or the *Plant Protection Act*, or their related regulations, not listed here, will have to obtain approval from their superintendent and the Importer and Exporter Compliance Unit before completing an AAAMP for the violation. The other legislative provisions that are enforceable by the CBSA are intended for very specific circumstances, and will only be used where deemed appropriate by management and the program area.

PAYMENT AND APPEALS OPTIONS

56. There are two options for travellers who receive an NOV with a Penalty – they can pay it or appeal it.
57. If a traveller does not wish to dispute the penalty and pays immediately or within 15 calendar days, the penalty is reduced by 50% of the amount, as prescribed by the AAAMP Act. After 15 calendar days, the full amount

applies. By paying the penalty, the traveller is deemed to have committed the violation and waives their right to appeal.

58. If the traveller does wish to dispute the penalty, the AAAMP Act gives travellers the option to request a review of the NOV within 30 days of service of the NOV, either to the Minister of Public Safety and Emergency Preparedness (Minister) or to the Canada Agricultural Review Tribunal (Tribunal).
59. Travellers can also appeal an NOV with Warning to the Minister or to the Tribunal.
60. Officers must clearly explain these payment and appeal options to the traveller before serving the NOV. Once the traveller is done reviewing the NOV, the BSO must confirm whether or not they understand or have any questions.
61. When an appeal is commenced, officers must treat it with concern and immediate attention. In appealed AAAMPS, the Appeals Division or the Enforcement Litigation Unit of the Recourse Directorate will contact the BSO for additional information or evidence (depending on whether the traveller requested a Ministerial or Tribunal review). The Appeals Division is responsible for the internal ministerial review process, while the Enforcement Litigation Unit is responsible for defending AAAMPS on appeal before the Tribunal.
62. By supplying additional comments and evidence, when requested by the Recourse Directorate, or when the officer believes it is required, the officer contributes to the quality of the final decision.
63. Where an appeal is filed or a case is being held open for further investigation, or for other similar reasons, the closing of the case must be withheld pending a notification of the outcome. It is imperative that officers review all feedback from the Recourse Directorate in order to better understand how to deal with future enforcement actions.

FORFEITURE AND DISPOSAL OF FPA GOODS

64. Where an FPA good is found to have been in contravention of any CFIA legislation (e.g., for failure to declare) it may be immediately seized as forfeit to the Crown and disposed of by the CBSA pursuant to the *AAAMP Act*. A BSO may, however, choose to release the goods to the traveler despite a contravention of the law if he/she deems appropriate (e.g., family pet, admissible goods). If the BSO chooses to allow the goods entry into

Canada, he/she must still, in all instances, verify in AIRS that the goods are admissible.

65. FPA goods that are seized by or abandoned by travellers to the CBSA are generally the responsibility of the CBSA to store and dispose of. FPA goods that are deemed admissible into Canada, but are seized for non-compliance with CFIA legislation, can be disposed of using regular or international waste bins. FPA goods that are deemed inadmissible into Canada, however, must be stored and disposed of using international waste bins. If CFIA-approved international waste disposal facilities do not exist in the area, the CFIA should be called to arrange for disposal, or for small amounts of international waste, the waste should be placed into doubled international waste bags, tightly sealed and transported by a BSO to a port with an international waste bin. For more information on International Waste, refer to the CBSA's *International Waste Standard Operating Procedures*.
66. It is important to note that live animals that are seized, abandoned or forfeited must be referred to the CFIA veterinarian for disposition. For further information, refer to the CBSA's *Live Animal Inspections SOP*. In addition, any seized, detained or abandoned goods, plants or animals that are protected under CITES must be transferred to ECCC Wildlife Enforcement Officers for disposition. Where live animals regulated by both agencies (e.g., parrots, ocelots) are intercepted, the CFIA and ECCC will jointly make decisions on handling and disposition. Refer to the CBSA's *CITES SOP* for further information.

REFERENCES

Health of Animals Act
Health of Animals Regulations
Plant Protection Act
Plant Protection Regulations
Canadian Food Inspection Agency Act
Agriculture and Agri-food Administration Monetary Penalties Act
Agriculture and Agri-food Administrative Monetary Penalties Regulations
Customs Act
Agriculture and Agri-Food Administrative Monetary Penalties (AAAMPs) Processing Manual (APM)
Automated Import Reference System (AIRS)
ICES and AAAMPs Data Entry Guidelines
Canada Agricultural Review Tribunal (CART)

CBSA ENFORCEMENT MANUAL

Part 6

SEARCHES AND ENFORCEMENT ACTIONS - PERSONS

Chapter 1

ARREST AND DETENTION POLICY AND PROCEDURES

9/12/2015

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to arrest and detain suspect persons when the arrest and detention is lawful and is conducted in accordance with these policy guidelines.

DEFINITIONS

2. See Glossary.

AUTHORITIES

Criminal Code

3. Sections 25 and 27 – Provides officers with the legal authority to use as much reasonable force as is necessary in the administration and enforcement of their duties.
4. Section 26 – A peace officer may be held criminally liable for the use of excessive force. The pertinent sections of the *Criminal Code of Canada* are 25, 26, 27, 34, 35, 36, and 37. Failure to exercise sound judgement could lead to legal ramifications.

Note: It is the officer who is responsible for the health and safety of persons who must be restrained.

5. Subsection 495(1) – Authorizes officers to arrest persons found committing or known to have committed a criminal offence.
6. Subsection 495(2) – Sets limitations on when an officer will arrest persons found committing or known to have committed a criminal offence.
7. Section 496 – Provides officers the authority to issue an Appearance Notice to a person who has not been arrested as per the limitations described in subsection 495(2).
8. Section 497 – Authorizes officers to release from custody persons arrested, with or without warrant, for an offence described in section 496 if public interest and court appearance are satisfied.
9. Subsection 503(1) – Authorizes officers who arrest a person with or without warrant, to detain the person in custody and requires them to take the person before a justice within twenty-four hours after their arrest.

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Charter of Rights and Freedoms

10. Section 9 – Everyone has the right not to be arbitrarily detained or imprisoned.
11. Section 10 – Everyone has the right on arrest or detention
 - a) to be informed promptly of the reasons therefore;
 - b) to retain and instruct counsel without delay and to be informed of that right; and
 - c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

Note: The Supreme Court of Canada has said that the words “arrest” and “detention” both indicate some form of compulsory restraint.

Customs Act

12. Section 160 – Lists the particular sections of the *Customs Act*, that if violated are punishable by either indictment or summary conviction. Officers, therefore, may arrest for contraventions of those sections listed.
13. Subsection 163.5(1) – Authorizes designated officers, when at a customs office and performing their normal duties, to make an arrest for a criminal offence under any other Act of Parliament.

Note: See Appendix A for the relevant authorities, limitations, and a list of commonly encountered offences for which officers may arrest.

PURPOSE AND SCOPE

14. The purpose of this policy is to outline guidelines on arrest in accordance with section 495 and detention in accordance with subsection 503(1) of the *Criminal Code* any time an officer is in a legal position to make an arrest or detention, whether it is under the *Customs Act*, the *Excise Act* or the *Criminal Code*.
15. The policy also provides guidelines for the frisk of persons and the use and maintenance of handcuffs by officers.
16. This policy applies to all border services officers (BSO's) in the performance of their duties under the *Customs Act*, the *Excise Act* or the *Criminal Code*.

BACKGROUND

17. In the past, BSO's as peace officers were accorded powers of arrest that were limited to enforcing the *Customs Act*.
18. In 1998, Bill C-18, *An Act to Amend the Customs Act and Criminal Code*, received Royal Assent. The legislation provides designated border services officers with the authority to arrest for any criminal offence encountered at a customs office while performing normal duties, or when acting in accordance with section 99.1 of the *Customs Act*. In particular, these offences include child abduction, possession of stolen property, and impaired driving. Designated officers also have the authority to enforce outstanding warrants for arrest under the *Criminal Code*.

Note: Refer to *Criminal Code* Offences Policy and Procedures for guidelines pertaining to designated and non-designated officers.

POLICY GUIDELINES

General

19. Except in exigent circumstances, officers will notify their superintendent of an arrest or detention as soon as possible.
20. Superintendents will review decisions concerning the detention or arrest of a person and discontinue the detention or arrest where it is evident that charges will not be laid or the person's presence at the CBSA office is no longer required.
21. Officers will caution importers or their agent concerning the making of statements when, during the course of a seizure or penalty action involving high value goods, it becomes apparent that the threshold for the initiation of prosecution action has been exceeded and criminal charges may also be laid.

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Detention

22. Persons are deemed to be detained under the *Charter of Rights and Freedoms* and are entitled to all the provisions of section 10 of the Charter when they are not free to leave the confines of the CBSA area once all routine CBSA processing has been completed.
23. As soon as a decision to detain a suspect is made, as in the case of a personal search, a suspect must be informed that they are being detained, advised of the reason for the detention and cautioned.
24. Suspects must indicate they understand, be asked if they wish to contact counsel, and be informed that they will be provided with access to a telephone if they wish to do so.

Arrest

25. Officers will make an arrest, subject to restrictions in 495(2) of the *Criminal Code*, in situations concerning serious infractions of the law and where the criteria found in the CBSA Prosecution Policy are met. These include offences involving:
 - a) narcotics;
 - b) firearms;
 - c) prohibited goods such as child pornography;
 - d) controlled or regulated goods, including all permit and Other Government Department (OGD) requirements;
 - e) evasion of revenues exceeding \$1000.00 in commercial cases;
 - f) evasion of revenues exceeding \$2000.00 in personal cases; and,
 - g) hindering an officer.
26. Designated officers will make an arrest, subject to restrictions in 495(2) of the *Criminal Code*, for *Criminal Code* infractions where the criteria found in the *Criminal Code* Offences Policy and Procedures are met.

Note: Refer to Part 6, Chapter 7, *Criminal Code* Offences Policy and Procedures.

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27. Officers may arrest non-residents of Canada involved in smuggling goods into Canada in a wilful and premeditated manner and/or in instances involving the smuggling of high value goods.
28. Officers may arrest Canadian residents, subject to the restrictions in 495(2) of the *Criminal Code*, involved in the smuggling of high value goods.
29. Officers will not arrest a person under the age of 12, as they cannot be convicted of an offence.
30. For matters involving *Customs Act* offences, the Criminal Investigation Division (CID) will be contacted and apprised of the situation.
31. In cases of doubt relating to *Customs Act* offences, the CID will be consulted for guidance.
32. In cases of criminal prosecutions involving offences that are the primary responsibility of the CBSA such as the *Customs Tariff, Export and Import Permit Act*, etc. the regional Investigations office will be contacted and advised of the situation.

Rights of the Individual

33. When a person is not free to leave the custody of an officer or the confines of a customs office because they are the subject of enquiries, the person is considered detained and their rights under the *Canadian Charter of Rights and Freedoms* must be respected.
34. When a person is detained or placed under arrest, their rights under the *Canadian Charter of Rights and Freedoms* must be respected.
35. Persons must be informed promptly of the reasons for their arrest or detention, that they have the right to retain and instruct counsel without delay, and be cautioned regarding the making of statements.
36. A person who is detained in accordance with the Charter for customs purposes will be advised of their right to counsel and cautioned regarding the making of statements. This is regardless of whether the person is also considered detained in accordance with the Charter for immigration purposes.
37. Customs processing must be concluded before persons are removed for Immigration detention.

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38. A person who is detained or arrested must be allowed the opportunity to contact counsel of their choice before any further action is taken (e.g., interview, search to recover evidence, etc.) except when a personal search is already underway. In these cases, persons will be given the opportunity to contact counsel as soon as the personal search is complete.

Arrest of Foreign Nationals

39. Officers will inform arrested persons identified as being a foreign national (a person who is not a Canadian citizen including a stateless person) of their entitlement to contact the embassy or consulate officials of their home country once all arrest formalities have been completed.
40. Officers will allow arrested foreign nationals to contact the embassy or consulate officials of their home country. This is in addition to being allowed to contact counsel.

Note: In the case of an arrest for an impaired driving violation, the contacting of embassy or consulate officials will not delay any breath testing that must be performed.

Note: Refer to Part 6, Chapter 7, *Criminal Code* Offences Policy and Procedures.

41. Officers will notify Citizenship and Immigration Canada (CIC) as soon as possible after the arrest of a foreign national, including foreign nationals temporarily residing in Canada (e.g. work or student visas, Minister's Permit).
42. Officers will advise the CID or police when they arrive to take custody of a foreign national that they have been informed of their entitlement to contact embassy or consulate officials and whether contact has been made.

Frisks

43. It is strongly recommended that officers of the same sex as the person to be frisked conduct frisks.

Note: It is recognized that in certain situations and at smaller ports this will not always be possible.

44. A frisk for weapons will always be conducted whenever a person is being detained or arrested, or if an officer has reason to suspect that a person is carrying a concealed weapon or the officer or public's safety is at risk.

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45. Prior to placing an individual in a detention cell or secure area the person must be frisked for weapons, including but not limited to razor blades, lock picks, pins, and plastic explosives.
46. Evidence frisks are not to be conducted to solely disprove a person's declaration unless there are indicators or other evidence to suggest the person has misstated or purposely concealed the truth.
47. A frisk for evidence will always also entail a frisk for weapons. A frisk for weapons, however, will not necessarily constitute a frisk for evidence.
48. Frisks, whether for weapons and/or evidence, will only be conducted by patting down the outer clothing that is covering a person's body.
49. All frisks will be carried out with as much discretion and privacy as possible.
50. Frisks will be conducted in the presence of another officer to safeguard against any unwarranted allegations of wrongdoing.
51. Where available, officers will use a metal detector wand to augment a manual frisk.

Note: Before using the wand, persons must be asked if they are wearing a pacemaker or other similar heart device. Those who identify themselves as wearing one should only be frisked manually.
52. In the event that a prohibited or restricted weapon is found, the person is to be immediately placed under arrest, advised, and cautioned.
53. Officers will discontinue personal searches when they find that because of a frisk for evidence and/or weapons their reasonable grounds for conducting a further personal search have disappeared.

Handcuffs

54. Based on risk, officers have the authority to handcuff persons who are lawfully arrested or detained. Officers must assess the risk and act on reasonable grounds when deciding to handcuff a person. Reasonable grounds may include, but is not limited to, threat posed to the officer, another officer, members of the public, protecting the person, potential flight risk, and/or preventing the destruction of evidence.
55. Officers will apply handcuffs using techniques learned in training.
56. Officers will not at any time, nor under any circumstances, handcuff a person to any object.

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57. Officers will not handcuff themselves to a detained or arrested subject.
58. Officers are authorized to carry only handcuffs that have been approved and issued by the CBSA.
59. Officers will carry their issued handcuffs on their person in an easily accessible manner while on duty.
60. CBSA approved handcuffs will be issued after officers have successfully completed approved training.

Use of Force

61. Officers may only use force in respect of the duties they are authorized to perform in the course of their duties as officers of the CBSA. The CBSA will not support officers who use force outside of the scope of their duties, employment and (legal) authority.
62. Officers will only use as much force as is necessary, i.e. the use of reasonable force to defend themselves and the public, to control subject behaviour, or to administer or enforce the law. The amount of force to be used will be that which is proportional to the exhibited behaviour.
63. Officers must select the use of force option(s) that is the most reasonable intervention option(s) based on their assessment of the risk, situational factors and exhibited behaviour. Use of force options range from officer presence to the use of deadly force and include the use of control techniques, intermediate devices (OC spray), impact weapons (baton) and firearms (duty-firearm) (refer to the IMIM in Appendix "A").
64. The CBSA will support officers who use force so long as it is necessary to defend themselves, follow officers, employees of other government departments, persons in custody or members of the public, or to execute their duties, provided their actions are in accordance with the law and are justified, reasonable and consistent with CBSA policy and training.
65. Officers will attempt to control persons without jeopardizing their own safety.

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Arrest and Detention

Dispensing Prescription Medication

66. Officers will remove prescription medications from arrested persons and follow CBSA policy and procedures for dispensing them when necessary.

Note: Refer to Part 6, Chapter 2, Care and Control of Persons in Custody Policy and Procedures for detailed guidelines.

Taking of Notes and Completion of Documentation

67. Whenever an arrest is made, officers will take appropriate notes and record these notes in the BSF556 Officers Notebook.
68. Whenever an arrest is made, officers will complete the identification and arrest sections of the Personal Search and Arrest Report (BSF667) found in the Integrated Customs Enforcement System (ICES) and, for *Criminal Code* offences, the *Criminal Code* Incident Report (E641).

Note: Non-automated ports must complete a paper version of the Personal Search and Arrest Report (BSF667).

Note: Refer to the ICES User Reference Manual, Chapter 20 for procedures on completing the Personal Search and Arrest (BSF667) window contents.

Note: Refer to *Criminal Code* Offences Policy and Procedures, Appendix C for a sample of the E641.

Release from Arrest

69. Where a person has been arrested and it is subsequently determined that charges against the person will not be laid, the person will be released from arrest immediately upon completion of CBSA processes.
70. Persons who are arrested and against whom charges will be laid may be released from arrest by:
- a) compelling their appearance in court by way of a summons, which will be issued by the responsible police agency;
 - b) the CID or responsible police agency; or
 - c) a designated officer upon issuance of an Appearance Notice (Form 9).

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Note: Refer to Part 6, Chapter 7, *Criminal Code* Offences Policy and Procedures and Appendix B of the same chapter for a sample of Form 9.

ROLES AND RESPONSIBILITIES

Border Services Officers

71. Border Services Officers (BSO) are responsible for:

- a. enforcing the *Customs Act*, *Criminal Code*, and other federal statutes in accordance with legislative requirements, established policies, and standard operating procedures;
- b. ensuring arrests and subsequent release of individuals are completed in accordance with legislative requirements and these policy and procedure guidelines;
- c. notifying the superintendent as soon as possible when an arrest has occurred;
- d) wearing their issued handcuffs at all times while on duty and ensuring that they are maintained and in good working order;
- e) reporting arrests by completing a Personal Search and Arrest (BSF667) in ICES or, for non-automated ports, completing a paper copy of the BSF667 report;
- f) completing a *Criminal Code* Incident Report (E641) when required;

Note: Refer to Part 6, Chapter 7, *Criminal Code* Offences, Appendix C for a sample of the E641.

- i. completing a Use of Force Report (E642) if required;

Note: Refer to part 6, Chapter 5, Use of Force, Appendix B for a sample of the E642.

- ii. maintaining an open line of communication with the police agency of jurisdiction for their area; and
- iii. recording and maintaining detailed notes of an occurrence in the issued BSF556 Officers Notebook and preparing the necessary documentation for further investigation and prosecution.

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CBSA Superintendent

72. CBSA superintendents are responsible for:
- a) ensuring adherence with these policies and procedures;
 - b) evaluating the reasonable grounds as presented by an officer and where warranted authorizing the use of urinalysis or monitored bowel movements; and
 - c) taking appropriate corrective action on any breaches of this policy.

Intelligence Directorate and Criminal Investigations Division

73. Intelligence Directorate and Criminal Investigations Division (CID) is responsible for:
- a) developing, modifying, and approving policies in accordance with court jurisprudence, related to the administration of the detention and/or arrest of persons; and
 - b) monitoring adherence with this policy by the regions.

PROCEDURES

Rights and Cautions

74. If possible, remove the person from public view prior to the detention or arrest.

Note: This may not be possible with *Criminal Code* offence related arrests and detentions, as the prevention of the continuation of the offence takes precedents (i.e., impaired driving).

Note: Refer to Part 6, chapter 7, *Criminal Code* Offences Policy and Procedures.

75. Conduct the detention or arrest in a calm professional manner.
76. Ensure that you have the person's attention. Do not touch them to gain their attention.
77. Confirm verbally that the person is paying attention.

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78. Inform the person that they are being detained or arrested and of the reason for it.

Note: Refer to Part 6, Chapter 7, *Criminal Code* Offences Policy and Procedures for statements relating to *Criminal Code* offences (i.e., I am arresting you for impaired driving).

- a) When exercising powers of arrest use one of the following statements:

“I am arresting you for:

- i) failing to properly declare the goods in your possession as required by the *Customs Act*,
- ii) smuggling or attempting to smuggle into Canada goods, the importation of which is prohibited, controlled, or regulated by or pursuant to the *Customs Act* or any Act of Parliament,
- iii) under the provisions of the *Criminal Code*, assaulting/obstructing a peace officer,
- iv) hindering or attempting to hinder or prevent me from carrying out my duties as authorized under the *Customs Act*.”

- b) In cases of detention, modify the previous statement by substituting the words “I am arresting you for” with “I am detaining you for suspicion of”.

Note: Officers are advised against quoting specific sections to arrested individuals as it is not necessary to do so until such time as a criminal charge is laid.

79. Confirm verbally that the person understands the enforcement action.
80. Note the time of arrest or detention and any answer received in your notebook.
81. Read the person the following statement concerning their right to counsel:

“It is my duty to inform you that you have the right to retain and instruct counsel without delay.

You have the right to obtain legal advice without charge from duty counsel. Duty counsel is available at: _____ during the following hours: _____.

You have the right to apply for legal assistance without charge through the Provincial Legal Aid Program. The Legal Aid telephone number in this area

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is: _____. Their office is located at: _____ and office hours are from: _____.

Do you understand what has been said to you?”

Note: For *Criminal Code* offences such as impaired driving, it may be necessary for the officer to utilize the police agency of jurisdiction wording concerning the individuals right to counsel for court purposes.

82. If a person gives an indication that they do not understand the right to counsel, take steps to facilitate their understanding. This may require going beyond the mechanical recitation of the above notification.
83. If a language problem is identified, take all reasonable steps to obtain an interpreter or other person capable of speaking the language of the person.
84. Note the time right to counsel was read, understood, and any answer received in your notebook.
85. When satisfied that the advisement is understood, ask the person the following question:

“Do you wish to retain and instruct counsel or have access to legal aid?”
86. Note the information provided, the time, and any answer received in your notebook.
87. Allow the suspect to contact counsel of choice if requested.

Note: If a call takes place in a closed or private room, the door to the room may be closed only if the suspect can still be observed (i.e., through a window). If a call takes place in an open room, all officers will maintain an appropriate distance so that the conversation is private and cannot be overheard.

88. To ensure that any statement or admission of guilt, etc. made by a person after detention or arrest is admissible evidence in court, caution the individual concerning such statements by reading the following caution immediately after notifying the person of the right to counsel:

“You need not say anything. You have nothing to hope from any promise or favour, or nothing to fear from any threat, whether or not you do say anything. Anything you do say may be used in evidence. Do you understand?”
89. Note the time and any answer received in your notebook.

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90. If a person has waived their right to counsel, frequently advise them that they may change their mind and invoke their right to counsel at any time in the process.
91. At any time when a person has admitted to unlawful conduct and has not been previously cautioned, immediately caution them concerning the making of any further statements.

Arrest of Foreign Nationals

92. Determine if in fact the person being arrested is a foreign national, in other words, a citizen of another country.
93. After arresting, advising of their right to contact counsel, and cautioning against making statements, advise foreign nationals that in addition to their right to contact counsel they are also entitled to contact the embassy or consulate of their home country. Foreign nationals may contact their embassy or consulate and counsel while under detention as well.

Note: In the case of an arrest for an impaired driving violation, the contacting of embassy or consulate officials will not delay any breath testing that must be performed.

Note: Refer to Part 6, chapter 7, *Criminal Code* Offences Policy and Procedures.

94. Allow the person to contact the embassy or consulate of their home country if they wish to.

Note: The embassy or consulate officials contacted will ensure that the arrested person's rights under Canadian law are protected and will, if requested, notify the person's family of the arrest. While embassy or consulate officials may assist the person in obtaining legal counsel, they will not, as a matter of course, make any arrangements for the person's release.

95. Record in your notebook who was called, if contact was made, and the time of the call.
96. Notify Citizenship and Immigration Canada (CIC) as soon as possible of the arrest of any foreign national.
97. Advise the CID or police if they attend to take custody that the person was advised of their entitlement and whether or not contact was made.

Frisk for Weapons

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98. Immediately after a suspect has been advised of their rights or as a simultaneous action, frisk for weapons as a safety precaution.

Note: It is not necessary that a person be first cautioned before a frisk is performed. While it is preferable to provide the cautions in advance, the frisk may be performed as a simultaneous action.

Note: It is strongly recommended that officers of the same sex as the person to be frisked conduct frisks. It is recognized that in certain situations and at smaller ports this will not always be possible.

99. Prior to placing a person in a detention cell or secure area conduct a frisk by following these steps:
- a) secure the baggage, conveyance, and, when deemed necessary, any travelling companions;
 - b) escort the person away from the public area and into an interview room or other private area;
 - c) request the assistance of another officer;
 - d) ask the person to remove any over coat, jacket, sweater, blazer, etc.;
 - e) pat down any removed article;
 - f) position the person and yourself in the most safe and secure manner possible;
 - g) lightly pat down with the palms of your hands the outer clothing of the person including:
 - i) sides, front, and back of arms and legs; and
 - ii) sides, front, and back of the torso.
 - h) ask the person to lift their feet to display the undersides of their shoes or boots;
 - i) be aware of the possible presence of plastic explosives;
 - j) where available, use the metal detector wand;
 - k) before using the wand, ask the person if they are wearing a pacemaker or other similar heart device and those who identify themselves as wearing one should only be frisked manually;

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- l) set the wand to a low sensitivity so that razor blades and, in the event of handcuffing, pins and other small devices that could be used to pick the handcuff lock will be detected;

- m) make light contact with the person's clothing;

Note: The wand is sensitive along its length and circumference.

- n) pass the metal detector wand over:

- i) the sides of the arms and legs;
- ii) their complete front and back profiles; and
- iii) boots and shoes.

Note: Be aware that large metal belt buckles may make it difficult to detect a weapon hidden behind the buckle or near the waistband. In some cases, a weapon may be hidden within the buckle itself and for this reason metal belt buckles should be examined manually.

- 100. In the event that a prohibited or restricted weapon is found, place the person under arrest, advise and caution them.

Handcuffing

General

- 101. Handcuff arrested persons and detained persons in accordance with the policy guidelines.

- 102. Recognize and remember handcuffs:

- a) have limitations;
- b) do not fully immobilize the individual;
- c) do not mean that a threat no longer exists simply because the person is restrained;
- d) do not negate the possibility of an attempt at escape or an injury to an officer.;
- e) can turn into a dangerous weapon if not properly applied; and

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- f) can be removed if:
 - i) a person has slender hands and wrists and can slide the handcuffs off;
 - ii) they are not double locked, as they can be opened by shimmying the device; or
 - iii) a person has not been properly frisked and/or observed and has access to a lock pick device.

103. Record in your BSF556 Officers Notebook the time, circumstances, and whether force was required whenever you place a person in handcuffs.

104. When an arrested person is going to undergo a personal search, remove handcuffs once in the search room.

Note: It is not advisable to remove handcuffs from a person who is violent. In such instances, delay a thorough search until sufficient aid has arrived (e.g., additional officers or police).

105. When turning an arrested person over to another agency, allow the receiving officer to place their handcuffs on the person before removing the CBSA issued handcuffs.

106. Do not leave a person in custody in handcuffs unguarded.

Note: Handcuffs are by no means foolproof and should be used as a temporary restraining device only.

107. In each instance where handcuffs are used, record the necessary information on the Personal Search and Arrest (BSF667) in ICES and in your notebook. For non-automated CBSA offices, the BSF667 report must be completed manually.

Note: Refer to the ICES User Reference Manual, Chapter 20 for procedures for completing the Personal Arrest and Search (BSF667) window contents.

108. Immediately report the loss of any handcuffs to the superintendent on duty.

Handcuff Application

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Note: The following are “general” guidelines only. The techniques taught in the approved training are constantly evolving and improving. Officers, therefore, will use the techniques taught in training when there is a discrepancy between these guidelines and the training techniques.

109. Ensure handcuffs are in the single lock position (pre-loaded) so that they are ready for immediate use.
110. Ensure you have the physical means to apply the handcuffs before attempting to do so, as the application of handcuffs may precipitate violence from the person.
111. When practical, approach the suspect from the side or rear and remain alert for any unexpected moves.
112. Frisk the person for weapons or objects that could be used to pick the handcuff lock.
113. Attempt to keep the person off balance when applying the handcuffs and keep yourself in a well-balanced position to control the handcuffing procedure.
114. Apply the handcuffs as quickly as possible to eliminate time for the suspect to resist being handcuffed.
115. Press the handcuffs onto each wrist, rather than striking them; this will reduce the potential for injury to the suspect's wrist.
116. Close the jaw and conduct a visual inspection to ensure the skin is not pinched in the jaw and that circulation is not restricted.

Note: Never place your finger(s) between the jaws of the handcuffs and the individual's wrist.

117. Ensure handcuffs fit snugly on a person's wrists but, at the same time, are not overly tightened so as to restrict blood flow to the hands.
118. Once both wrists are secured, immediately double lock the handcuffs to prevent the suspect from tightening them or picking the lock.
119. Never handcuff a person to yourself, a fixed object, to a vehicle, or other mobile object.
120. Do not allow one end of the handcuffs to be secured to one wrist and the other end left loose. The loose cuff could be used as a weapon against you.

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121. When removing handcuffs, keep the suspect off his/her balance to discourage escape or attack.
122. To ensure further safety when removing handcuffs, have another officer present.
123. When transferring custody of a person, allow the officer to place their handcuffs on the person before removing yours.

Handcuff Maintenance

124. Ensure that your issued handcuffs are:
 - a) in good working order;
 - b) inspected frequently, cleaned, and lightly oiled (recommended monthly);
 - c) kept free of dirt and other foreign substances particularly in the ratchet and key hole where dirt may hinder handcuff functioning; and
 - d) repaired or replaced if damaged.

Officer Safety

125. Use technical aids such as metal detector wands, goggles, and latex gloves as deemed appropriate.
126. Be aware of the location of First Aid Kits and what to do in cases of emergency.
127. Keep calm however provoked or difficult to maintain control in all situations.
128. When the potential for assault exists and you believe any attempts to use force to control a person would jeopardize your own safety:
 - a) leave the immediate area or interview room as soon as possible;
 - b) request assistance from the shift superintendent or others as appropriate;
 - c) call the local police agency immediately; and
 - d) follow police instructions.
129. If you are prevented from leaving the interview room or immediate area:

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- a) activate the alarm system or shout for help to nearby staff;
- b) use force to defend yourself against an unprovoked assault, as long as you use no more force than is necessary to prevent the assault or the repetition of it. Do not attempt to apprehend or restrain the individual unless there is no other option.

Note: Refer to Part 6, Chapter 5, Use of Force Policy and Procedures.

130. Following the incident:

- a) obtain a medical examination and report if you have been assaulted;
- b) protect and preserve any physical evidence;
- c) prepare a complete report of what you experienced or witnessed;
- d) forward the medical report and incident report to your supervisor; and
- e) record the details of the incident in your notebook.

131. Be aware of first aid and emergency arrangements that may be needed by colleagues or the travelling public.

Contacting Counsel

132. If a person is not permitted to contact counsel immediately after being arrested or detained, it is a *prima facie* violation of the *Charter of Rights and Freedoms*, therefore:

- a) proceed with extreme care in continuing the investigation before allowing the person detained or arrested to contact counsel; and
- b) make detailed notes of the circumstances in your notebook.

Note: If the arrest is made while a personal search is in progress, complete the search prior to allowing the person to contact counsel.

133. If the person elects to contact counsel, they will be permitted every reasonable opportunity to do so. If they get no answer, or a busy signal, they will be allowed to try again or to call someone else.

134. Officers will give the person as long as is necessary and as many attempts as are necessary to contact counsel.

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135. If a person's attempt to contact counsel results in an unreasonable delay and they still wish to contact counsel, suggest that they attempt to contact a different lawyer or duty counsel.
136. If the person elects to contact counsel:
- a) do not suggest the name of counsel to the person;
 - b) provide access to a telephone and a telephone book or list of lawyers in the area and ensure the list includes the local Legal Aid phone number;
 - c) once the person has determined the counsel they wish to contact, dial the number and make the initial contact with counsel to confirm that this is in fact who is being contacted;
 - d) pass the phone to the person and provide them privacy while maintaining careful observation of the person to ensure they do not dispose of any evidence;
 - e) maintain an appropriate distance from the person to permit the call to be private and so that the conversation with counsel cannot be overheard; and
 - f) record in your notebook the time that the attempt to contact counsel was made, the telephone number called, any conversation you had with counsels office, and whether or not the contact of counsel was successful.
137. If long distance charges are involved allow the call to be charged to the CBSA office.
138. Allow a person to telephone a family member to assist in contacting counsel if they request to do so. A call to a family member is not to be considered as an opportunity to retain and instruct counsel. In such cases, permit the person subsequent opportunities to contact counsel.
139. If during the person's telephone call, counsel asks to speak to the arresting officer or the superintendent, accommodate the request. Limit these conversations with counsel to the reasons for the arrest or detention and any procedure that is expected to follow. Do not get involved in arguments or debates with counsel.

Contacting Police

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Arrest and Detention

140. Once a person is under arrest and been advised of their rights and cautions, contact the CID or the local police agency of jurisdiction, depending on the offence, to advise of the:
- a) situation;
 - b) time of arrest;
 - c) reason for arrest; and
 - d) approximate time the CBSA procedure is expected to conclude; and ask them to attend and take custody of the individual at that time.

Note: The law requires that the person be either released or taken before a justice of the peace within 24 hours of the arrest. It is therefore imperative that the officer advises the CID or police of the actual time that the arrest was made.

141. Make note of the time police were contacted and who was spoken to.
142. Pending the arrival of the CID or police and following the conclusion of the CBSA enquiries, place the arrested person in a detention facility or in a secure area of the CBSA facility, preferably out of public view, and monitor them carefully until the CID or police agency of jurisdiction assumes custody.

Note: Refer to Care and Control of Persons in Custody Policy and Procedures and follow the guidelines pending the arrival of the CID or police agency of jurisdiction.

143. When the CID or police arrive to take custody of an arrested person, do not delay the transfer of custody pending the arrival of counsel. If counsel does arrive, it is sufficient to advise them that their client is in the custody of the CID or police.
144. Except for matters referred to the CID, when an arrest is made for an offence under an Act other than the *Customs Act* (e.g. *Criminal Code* offence), notify the responding police agency of jurisdiction following procedures outlined in the local agreement/Memorandum of Understanding (MOU).
145. If the CID or police agency of jurisdiction will not take the case, release the person from arrest and complete normal CBSA processes and procedures, if applicable.

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Arrest and Detention

146. If the CID or police cannot attend but agree to lay the information for the charge (in other words, proceed with the offence), determine if it is feasible to issue an Appearance Notice (Form 9) to the accused.

Note: Refer to *Criminal Code* Offences Policy and Procedures for guidelines for the completion of Form 9 and Appendix B of the same chapter for a sample of Form 9.

147. Where the officer or their superintendent feels strongly that police should lay a criminal charge but they are unable or unwilling to respond, CID should be contacted.

Statements and Secondary Cautions

148. If counsel has advised their client not to make any statements until their arrival, refrain from attempting to obtain any further statements.
149. Make careful and complete notes of any spontaneous remarks that are made, including the time at which they are made in your notebook.
150. Gather information on the identification and possible actions of the person, such as:
- a) criminal record;
 - b) the possibility that he or she may disappear if released;
 - c) the potential destruction of further evidence; and
 - d) whether or not it is in the public interest to release them.
151. If a person volunteers relevant information, record all discussions *verbatim* in your notebook to the best of your abilities.

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Arrest and Detention

152. Notes taken during interviews should include:

- a) periodic recordings of the time;
- b) details of any questions asked;
- c) answers given;
- d) persons involved;
- e) evidence found;
- f) the condition of the accused at the time of the offence or investigation; (i.e., mental and physical health, any impairment, etc.);
- g) the ability of the accused to understand the discussion and questions asked; and
- h) a record of all persons who have contact with the accused.

153. Should another officer, superintendent, senior officer or other person in authority, who was not present during the original caution and questioning, enter the room where the person is held or where an interview is being conducted, this officer must immediately give a secondary caution upon entering the room. They will read the following caution:

“If you have spoken to any border services officer, police officer, or to anyone in authority or if such a person has spoken to you in connection with this case, I want it clearly understood that I do not want it to influence you in making any statement.”

Documentation

154. Whenever an individual is arrested or detained, complete the Personal Search and Arrest (BSF667) in ICES or, for non-automated ports, complete a paper copy of the BSF667 report.

Note: Refer to the ICES User Reference Manual, Chapter 20 for procedures regarding completion of the Personal Search and Arrest (BSF667) window contents.

Detention in Custody

155. When an individual is arrested, hold them in custody until such time as the CBSA enquiries are complete and the person is either released or turned over to the CID or the police agency of jurisdiction.
156. Consider all persons under arrest as a potential threat to the safety of the public and staff at any CBSA facility, as well as to their own physical well being (e.g., suicide or attempted suicide).
157. Place persons under arrest in a sterile CBSA standard detention cell or, where a sterile CBSA standard detention cell is not available, in a secure area of the office, where possible out of public view, and follow the policies and procedures pertaining to the care and control of persons in custody.

Note: Refer to Care and Control of Persons in Custody Policy and Procedures.

REFERENCES

158. *Customs Act*
Criminal Code
Canadian Charter of Rights and Freedoms
D and R Memorandum
ICES User Reference Manual

Part 6

SEARCHES AND ENFORCEMENT ACTIONS - PERSONS

Chapter 1

ARREST AND DETENTION POLICY AND PROCEDURE

Appendix A

AUTHORITIES, LIMITATIONS, AND COMMONLY ENCOUNTERED OFFENCES FOR WHICH BORDER SERVICES OFFICERS MAY ARREST

9/12/2015

APPENDIX A

Authority for Arrest

Criminal Code

495(1) – A peace officer may arrest without warrant:

- (a) a person who has committed an indictable offence or who, on reasonable and probable grounds, he believes has committed or is about to commit an indictable offence, or
- (b) a person whom he finds committing a criminal offence, or
- (c) a person in respect of whom he has reasonable and probable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.

Limitations to Arrest

Criminal Code:

495(2) – A peace officer shall not arrest a person without warrant for

- (a) an indictable offence mentioned in section 553,
 - (b) an offence for which the person may be prosecuted by indictment or for which he is punishable on summary conviction, or
 - (c) an offence punishable on summary conviction,
- in any case where
- (d) he believes on reasonable grounds that the public interest, having regard to all the circumstances including the need to
 - (i) establish the identity of the person,
 - (ii) secure or preserve evidence of or relating to the offence, or
 - (iii) prevent the continuation or repetition of the offence or the commission of another offence, may be satisfied without so arresting the person, and
 - (e) he has no reasonable grounds to believe that, if he does not so arrest the person, the person will fail to attend in court in order to be dealt with according to law.'

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Arrest and Detention

APPENDIX A

Common Arrest Offences

<u>Act</u>	<u>Section</u>	<u>Offence</u>	<u>Procedure</u>
<i>Customs Act</i>	153 (a)	Making false or deceptive statements with respect to the importation of goods.	Dual
	153 (c)	Wilfully evading or attempting to evade the payment of duties or compliance with the Act.	Dual
	153.1	Hindering a border services officer.	
	159	Smuggling goods subject to duties or goods prohibited, controlled, or regulated by an Act of Parliament.	Dual
<i>Criminal Code</i>	129	Obstructing a Peace Officer.	Dual
	253(a)	Operating a vehicle, vessel, aircraft, or railway equipment while impaired by alcohol or a drug.	Dual
	253(b)	Operating a vehicle, vessel, aircraft or railway equipment having consumed alcohol over .08	Dual
	270(1)	Assaulting a Peace Officer.	Dual
	279-283	Kidnapping, Hostage taking and Abduction	Kidnapping - Indictable Hostage Taking – Indictable Abduction – Indictable depending on

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Arrest and Detention

APPENDIX A section

<u>Act</u>	<u>Section</u>	<u>Offence</u>	<u>Procedure</u>
	270.1(1)	Disarming a peace officer.	Dual
	354	Possession of Property Obtained by Crime	Dual when under \$5000 CAD
	357	Bringing into Canada Property Obtained by Crime	Indictable

Part 6

SEARCHES AND ENFORCEMENT ACTIONS - PERSONS

Chapter 1

ARREST AND DETENTION POLICY AND PROCEDURE

Appendix B

OFFENCES AGAINST A BORDER SERVICES OFFICER

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Arrest and Detention

APPENDIX B

UNDER REVIEW

9/12/2015

CBSA ENFORCEMENT MANUAL

Part 6

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 2

CARE AND CONTROL OF PERSONS IN CUSTODY POLICY AND PROCEDURES

09/28/12

EN Part 6 Chapter 2

Care and Control of Persons in Custody

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to ensure the security and safety of all persons under arrest or detention.

DEFINITIONS

2. See Glossary.

PURPOSE AND SCOPE

3. The purpose of this policy is to provide guidelines for detention procedures and the care of persons while in custody at CBSA border offices and Inland Enforcement offices, pending their transfer to the Criminal Investigations Division (CID), responding police agency, Immigration holding centres or their release.
4. This policy applies to all Border Services Officers (BSO).

POLICY GUIDELINES

Access to Policy and Procedures

5. A copy of this policy and procedures will be available at all times in close proximity to detention cells and secure areas where persons are held in custody.
6. Local policies on care and control of persons held in custody may be added.
7. All officers involved in the care and control of persons held in custody will be aware of the location of this policy and procedures.

General

8. A person in the custody of a BSO will be treated with decency and provided all the rights accorded them by law.
9. Officers are responsible for the well being and protection of all persons in their custody and are to take precautions that ensure that persons are protected from harm to themselves or from others.
10. All persons lawfully arrested or detained will be placed in a CBSA standard detention cell or held in a secure area of the CBSA facility, preferably out of

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Care and Control of Persons in Custody

public view pending the arrival of the CID or responding police agency, or the persons' release.

Note: Refer to the Facility Guide for detailed guidelines pertaining to CBSA standard detention cells.

Note: In situations where the Vehicular Transport of Persons Under Arrest or Detention policy is applied, the subject may be transported to the responding police agency location or an alternate CBSA facility. Refer to the Vehicular Transport of Persons Under Arrest or Detention policy in the EN manual Part 6 Chapter 8 for further information.

11. Where a CBSA standard detention cell is not available and another law enforcement agency is on site and has access to a detention cell, arrangements may be made by written agreement, for the use of their detention cell
12. All persons will be monitored carefully until the CID or responding police agency assumes custody, or they are released.
13. A detention log, K159, will be kept in close proximity to the detention cell or the secure area of the CBSA facility where persons are held in custody at all CBSA offices.
14. Officers will ensure that persons held in custody are protected from harm to themselves or from others, as long as this does not seriously jeopardize the officers' health and safety.
15. Emergency fire and evacuation procedures must be posted in close proximity to the detention cell and secure area where persons are held in custody.

Note: See "Emergency and Evacuation" in the Procedures section of this chapter.

16. Monitoring duties must be posted in close proximity to the detention cell or secure area where persons are held in custody.

Note: See "Monitoring and Observation" that follows.

17. Female and male persons are not to be held in the same detention cell.
18. Persons detained in custody and subject to the provisions of the *Youth Criminal Justice Act* are to be kept separate from detained adults.
19. At no time is a person under the age of 12 to be placed in a detention cell.

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Care and Control of Persons in Custody

20. Personal searches will not be conducted in a detention cell, unless the cell is specifically designated for that purpose (e.g. dual purpose detention cell/search room).
21. Notices in both official languages informing the arrested or detained person of their right to counsel must be posted in a conspicuous place in close proximity to the detention cell or secure area where persons are held in custody.
22. A Canadian Police Information Centre (CPIC) query will be conducted on all persons in custody unless the check was previously conducted during the course of normal CBSA processes and arrest/detention procedures.
23. Prior to placing an individual in a detention cell, officers must ensure that the cell or area is sterile (clean and clear), and make note of this in their notebook and the detention log.
24. Officers will ensure, to the best of their ability, that persons held in a secure area of the CBSA facility, do not have easy access to any moveable objects and/or furniture that could be used to cause injury or escape.

Note: This includes but is not limited to such items as staplers, extra chairs or seating, pictures, manuals, floor or desk lamps, etc.

25. Where persons are held in custody, all reasonable measures must be taken to remove any article or item that could be used to cause injury or escape, including but not limited to belts, shoelaces, matches, lighters, and ties.
26. If a person is held in a secure area, the officer must remain with them at all times.
27. Except in an emergency, a BSO should open the detention cell door **only** when there are adequate BSOs or a police officer from the responding police agency present.

Note: For the purposes of this policy, adequate CBSA personnel means a minimum of two BSOs and where it is operationally viable at least one should be the same sex as the person under arrest or detention.

28. Except in an emergency and where operationally viable, an officer should not enter the detention cell where a person of the opposite sex is being held unless accompanied by an officer of the same sex as the person, or by a police officer from the responding police agency.

Note: Refer to the "Emergency and Evacuation" section of this policy.

Care and Health of Persons Held in Custody

29. Information from any medical alert card, bracelet, or necklace must be recorded in the detention log and in the officer's notebook.
30. Medical alert necklaces must be removed and stored with the persons' personal effects. At the discretion of the officer, an arrested or detained person may retain a medical alert bracelet.
31. In the case of a person who wears prosthetics (false limbs), it must be removed for searching prior to placing the person in a detention cell.
32. If the persons' medical condition requires special consideration or handling, the immediate supervisor on duty is to be advised immediately.

Note: The *Privacy Act* regulates the collection, retention, use, and disclosure of personal information, including medical information obtained relating communicable disease. Unless there is a demonstrated or reasonably foreseeable threat to the health and safety of others, or a warrant pursuant to a provincial health statute or a court order exists, medical information indicating the person is infected with a communicable disease must not be collected, retained, or disclosed.

33. In the case of a person with an apparent sickness, suspected of having acute alcohol poisoning, suspected of having a drug overdose, or they are injured or not fully conscious, even if the person denies requiring medical assessment, follow local procedures and ensure that:
 - a. the person receives immediate medical attention;
 - b. the person is examined by a medical practitioner; and
 - c. the person is not placed in a detention cell unless a medical examination conducted by a medical practitioner finds the person fit to be held in a detention cell.

Note: "Not fully conscious" means that a person is unable to communicate, respond to simple directions, or to move themselves a short distance.

34. Officers will advise the immediate supervisor on duty if a person refuses medical assistance.
35. Officers will document refusals in their notebook and the detention log.

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Care and Control of Persons in Custody

36. Regardless of the above, officers will request medical attention if the persons' condition is obviously serious whether the person consents or not.
37. Officers will remove prescription medication, insulin, and/or anaphylactic shock kits from persons held in custody and hold them with their personal effects. Officers will label these items with the person's name and any information they provide concerning dosage and use.

Note: See "Dispensing of Prescription Medications" in the Procedures section of this chapter.

38. Except under extreme emergency circumstances, CBSA personnel will not directly administer medication (i.e., via syringe/needle) regardless of their medical training (i.e., paramedic).

Note: The CBSA does not have the appropriate medical equipment available should a person have a negative reaction to medication administered.

Emergency and Evacuation Procedures

39. Emergency Fire and Evacuation procedures must be posted in close proximity to detention cells and secure areas where persons are held in custody.
40. At each CBSA office where there is a detention cell, all officers must be given an orientation of the cell area and procedures.
41. Officers who have care and control of an arrested or detained person must know what their responsibilities are in the event of a fire or other life threatening occurrence (e.g. bomb threats, gas leaks, etc.)
42. Officers will make every effort to remove persons in custody from immediate danger areas as quickly as possible if their actions will not pose a serious risk to their own health and safety.

Control of Detention Cell Keys

43. There must be a safe and secure system for the control, accountability, and security of detention cell keys.
44. All officers in receipt of detention cell keys are responsible for their security and safe return.

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Care and Control of Persons in Custody

45. Keys will be exchanged hand to hand and never thrown, slid, or placed on a desk or other surface.
46. Officers will not allow an arrested or detained person to have possession, hold, or examine detention cell keys or to become familiar with their storage location.
47. The loss of a detention cell key must be reported immediately to the immediate supervisor on duty.
48. Any malfunction or change in the detention cell lock workings must be brought to the attention of the immediate supervisor on duty immediately.
49. The unauthorized use, alteration, and/or duplication of detention cell keys without the prior approval of the port manager is strictly prohibited.
50. A duplicate set of detention cells keys, appropriately tagged, and safely stored must be readily available in case of an emergency.
51. All reference to cell key storage or location must be avoided within hearing range of an arrested or detained person or non-agency personnel.

Religious Devotion

52. The CBSA will not interfere with the religious rights of any person held in custody except where this is a risk to the safety of the officer and/or the security of the person.

Note: The safety of officers and the security of persons in custody are paramount and take precedent over individual acts of religious devotion.

53. Persons practicing the Sikh religion must have their kirpans (ceremonial dagger or sword) removed from them upon arrest or detention.
 54. If it is deemed necessary, officers may unsheathe kirpans preferably out of view of the owner whenever possible.
 54. Officers will document the removal of the kirpan on a Personal Search and Arrest Report BSF667 in ICES and keep it with the individuals' personal effects
- Note: At non-automated sites, a paper copy of the BSF667 must be completed.
55. Officers will instruct arrested and detained persons practicing the Sikh religion who are wearing a kes or pagari (turban) to remove it for a search

of the material and hair. Where practical, this will be done in private (e.g. search room).

56. After the search, officers will allow persons to replace their kes or pagari if the person is not displaying signs of depression or suicide.

Monitoring and Observation

57. Where it is operationally viable persons held in custody are to be monitored and observed by an officer of the same sex.
58. An officer will not be assigned any additional tasks while performing monitoring and observation duties of a person placed in a secure area.
59. Officers performing monitoring and observation duties of a person held in a cell may undertake simple tasks such as completion of arrest/detention paperwork, photocopying, etc. as long as the tasks do not interfere with the officers primary responsibility of monitoring and observing the person held in the cell.
60. Officers must conduct physical detention cell inspections frequently, irregularly, and at least once every 15 minutes.
61. Officers will record physical checks in the detention log and their notebook, including the persons' responses and the condition of the cell.
62. Officers will maintain constant visual observation of persons held in a secure area of the CBSA facility other than a detention cell.
63. Officers will record in the detention log and their notebook all observations and the results of physical checks of persons held in custody.
64. When doing a physical check of a detention cell, officers must ensure that the person is breathing properly and is conscious. If in doubt, the person must be awakened.
65. At CBSA offices where Closed Circuit TV (CCTV) or video monitoring equipment is installed in a detention cell, officers responsible for monitoring and observing persons held in the cell will stay in close proximity to and frequently check the monitor in addition to physically checking the person at least once every 15 minutes.

Note: The installation of a CCTV or video monitoring equipment in a detention cell **does not replace a physical check**. The installation of CCTV and video monitoring equipment is to enhance the level of safety and care of the arrested or detained person within a detention cell.

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Care and Control of Persons in Custody

66. CCTV/video monitoring equipment will not capture or transmit audio signals.
67. At CBSA offices where CCTV or video monitoring equipment is installed, the equipment must be maintained in working order. Any and all malfunctions, including concerns about picture quality or camera angles, must be documented and reported to the superintendent on duty who will take appropriate steps to remedy the situation.
68. Any person held in custody that has been identified with some form of physical or medical problem will be observed and monitored with extra attention.
69. If a person being held in a detention cell is believed to be suicidal, a **constant** visual and physical check is required. On the recommendation of the officers involved with the person, the immediate supervisor on duty will make the decision for a constant visual and physical check.

Note: "Constant visual and physical check" means that the arrested or detained person is kept under **continuous surveillance** from the time it was determined that the constant watch is required until it is discontinued by the immediate superintendent on duty, the taking into custody of the person by the CID or responding police agency, or the person is released from custody. The immediate supervisor on duty will record in the detention log the reason for withdrawing the constant watch.

Cutting Instrument

70. Officers monitoring persons held in detention cells must have access to an instrument for cutting down persons attempting to commit suicide by hanging.
71. All officers will receive instruction and be proficient in the use of the cutting device.
72. The cutting instrument is not to be left in the immediate area of the cell, but will be retained in an area out of view of persons being held in custody.

Note: At the discretion of local management this cutting instrument may be attached to the detention cell key. This will avoid delays in the location of the instrument should a hanging occur.

Meals

73. No eating utensils will be provided to a person held in custody.
74. Officers will advise restaurant or food providers not to leave toothpicks, skewers, or similar materials in meals.
75. Officers will take into consideration requests for religious special diets if the request can be accommodated reasonably. However, it is recognized that not all CBSA office locations will have the ability to meet this demand.

Note: Religious diets are defined as meals or dietary restrictions required by a recognized religious denomination.

76. Officers will not hand persons in custody meals wrapped in cellophane or other packaging products.

Note: When requested during Ramadan, detainees may be given pre-packaged meals thereby giving them the option to eat when the sun is down.

Release of Arrested or Detained Person

77. Officers will release persons held in custody in accordance with the Arrest and Detention Policy and Procedures and the Criminal Code Offences Policy and Procedures.

ROLES AND RESPONSIBILITIES

Border Service Officer (BSO)

78. BSOs are responsible for:
 - a) adhering to this policy and procedures;
 - b) ensuring that persons under arrest or detention are protected from harm to themselves or from others;
 - c) ensuring that they are familiar with Emergency and Evacuation Procedures with respect to persons being held in custody;
 - d) ensuring that the detention log is kept up to date in accordance with procedures; and

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- e) ensuring that the immediate supervisor on duty is informed promptly or as soon as is practical, of any problems concerning persons held in custody.

Immediate Supervisors

79. Immediate supervisors are responsible for:

- a) ensuring all officers are familiar with this policy and procedures;
- b) ensuring all officers are familiar with Emergency and Evacuation Procedures related to persons arrested or detained and held in custody;
- c) ensuring that this policy and procedures, the detention log, and emergency and fire procedures are kept in a location close to the cell, are easily accessible, and are up to date in accordance with procedures;
- d) ensuring an extra detention cell key and cutting instrument are easily accessible;
- e) reallocate or reassign staff to ensure officer will not be assigned any additional tasks while performing monitoring and observation duties of a person placed in a secure area; and
- f) taking appropriate corrective action on any breaches of this policy.

Managers/Chiefs

80. Managers/chiefs are responsible for:

- a) ensuring compliance with this policy and procedures; and
- b) ensuring officers receive any necessary training.

Enforcement Branch

81. The Borders Enforcement division is responsible for:

- a) developing, modifying, and approving policies in accordance with court jurisprudence, related to the administration and the care and control of individuals under arrest or detention being held in custody; and
- b) monitoring adherence to this policy by the regions.

PROCEDURES

General

82. When a person is arrested or detained, hold them in custody until such time as the enquiries are completed and the person is either released or turned over to the CID or the responding police agency.

Note: Refer to Arrest and Detention Policy and Procedures.

83. Consider all persons held in custody as a potential threat to the safety of the public and staff at any CBSA facility, as well as their own physical well being (e.g. suicide or attempted suicide).

84. Prior to placing persons under arrest or detention in a sterile detention cell or secure area of the CBSA facility, conduct a frisk for weapons.

Note: It is strongly recommended that frisks be conducted by officers of the same sex as the person to be frisked. It is recognized that in certain situations and at smaller ports this will not always be possible.

Note: Refer to Arrest and Detention Policy and Procedures for guidelines on conducting frisks.

85. Place persons under arrest or detention in a sterile detention cell or secure area of the CBSA facility.

Note: In situations where the Vehicular Transport of Persons Under Arrest or Detention policy is applied, the subject may be transported to the responding police agency location or an alternate CBSA facility. Refer to the Vehicular Transport of Persons Under Arrest or Detention policy in the EN manual Part 6 Chapter 8 for further information.

86. Conduct a physical check of persons held in a detention cell frequently, irregularly, and at least once every 15 minutes.
87. Maintain constant visual observation of persons held in a secure area of the CBSA facility.
88. When a person is being held in custody pending transfer to the CID or responding police agency, or their release:

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- a) Conduct a CPIC check, if it has not been conducted during the normal process or the arrest/detention process.
- b) Whenever possible use verbal persuasion to avoid a physical confrontation.
- c) Conduct a frisk of the person for weapons if not conducted during the arrest/detention process.

Note: It is strongly recommended that frisks be conducted by officers of the same sex as the person to be frisked. It is recognized that in certain situations and at smaller ports this will not always be possible.

Note: Weapons include but are not limited to razor blades, lock picks, pins, and plastic explosives.

- d) Ask the person to remove all personal articles carried on their person.
- e) In the case of a person who wears a prosthetic (false limbs), have them remove the prosthetic themselves.

Note: Wherever possible, the removal of a prosthetic should be done with due sensitivity while recognizing the safety of officers and the public, and the security of the person are paramount and take precedence.

Note: Some prosthetics use strapping to secure them in place. This strapping could be used for the purposes of hanging or as a weapon. Also, metal hooks (claw hands) should be removed for protection purposes, as they can be quickly converted to a weapon. Other prosthetics, which have pieces that could be used to injure the wearer or others, should be removed if the wearer displays aggression or violent behaviour.

- f) Deal with ambulatory aids, such as crutches, braces, or wheelchairs on an individual basis. Remove these aids if the person is aggressive. If this is done, consider providing constant observation or monitoring.
- g) Take all reasonable measures to remove any article that could be used for escape or injury. This includes but is not limited to belts, jogging pant cords, shoelaces, matches, lighters, and ties.
- h) Place articles in an evidence bag.

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- i) Record the articles on the personal effects record section of the Personal Search and Arrest BSF667 in ICES or for non-automated CBSA offices complete a paper copy of the BSF667.

Note: Refer to the User Guide of ICES, chapter 20, to learn how to fill out the Personal Search and Arrest BSF667 in ICES.

- j) Seal the evidence bag and mark it with the person's name and the words "personal effects". These articles will be turned over to the CID or police upon their arrival, or to the person upon their release.
- k) Seize any item which would be used as evidence of the offense. Take detailed notes of the seizure (time, seized item, location of concealment, etc.) in your notebook.
- l) Secure and maintain continuity of evidence.
- m) Note any allegations and/or observations in your notebook.
- n) Remove handcuffs prior to placing a person in the detention cell unless the person has a known history of violence or has shown violent tendencies.
- o) Ascertain if the person is on any prescription medication or if they have any other medical requirements or conditions (e.g. diabetes, heart problems, etc.).
- p) Note any requirements or conditions on the Personal Search and Arrest Report BSF667 in ICES or for non-automated CBSA offices complete a paper copy of the BSF667.
- q) Remove all prescription drugs or other drug substances from the person.

Note: See Care and Health of Persons Held in Custody in the Policy section of this chapter and Dispensing Prescription Medication procedures that follow.

- r) Provide persons with medical conditions requiring food or fluids at regular intervals with an appropriate food or drink when requested or when the situation warrants.
- s) Provide an appropriate meal if the person is making the request during a meal period (0600 – 0800, 1100 – 1300 or 1700 – 1900).

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Note: The cost of the meal must not exceed the meal allowance for government employees. Expenses may be paid from petty cash or as the region deems appropriate.

- t) When a meal is provided, note the following information in the detention log and your notebook:
 - i) name of individual;
 - ii) type of meal requested including religious, medical, or dietary restrictions;
 - iii) type of meal provided;
 - iv) date and time given;
 - v) person's comments, if any, relating to the meal provided; and
 - vi) cost of the meal.
- u) Ensure that no utensils or other items that could injure the person or any other person such as toothpicks or skewers are provided with the meal.
- v) Offer food and beverage whenever a person is being held in custody outside the normal meal periods indicated above if the detention in custody exceeds three hours (e.g. 1930 to 2330 or 0100 to 0500)

Note: Food need be nothing more than a light snack.

- w) Document in the detention log and your notebook each time the person is removed from the cell or secure area including:
 - i) reason for removal from the cell;
 - ii) time of removal;
 - iii) assisting officer; and
 - iv) time the person was placed back in the cell or secure area.
- x) Each time a person held in custody is removed from a detention cell and the policy to handcuff applies, place them in handcuffs.

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Note: Refer to Arrest and Detention Policy and Procedures for guidelines on handcuffing.

- y) Advise any relieving officer of any unusual conditions or behaviour of the person being held in custody.
- z) Ensure all documentation is completed and any property (e.g. personal effects) and/or evidence is available prior to turning the person over to the CID or responding police agency.
- aa) Ensure that the receiving officer signs/initials each document as required and that they receive appropriate copies.

Note: Refer to Arrest and Detention Policy and Procedures and *Criminal Code* Offences Policy and Procedures.

Observation and Monitoring

- 89. When doing a physical check, ensure that the person is breathing properly and is conscious.
- 90. If in doubt, awaken them. Utilize loud audible commands to rouse the person.
- 91. Do not enter the detention cell or touch the person.
- 92. Should the person not respond to arousal requests or commands, immediately notify the immediate supervisor on duty.
- 93. Request the assistance of the immediate supervisor or another officer for back-up, preferably of the same sex as the person, if you intend to enter the detention cell.

Note: Be aware at all times of the possibility of an escape attempt.

Sick or Injured Person

- 94. If an arrested or detained person becomes ill or is injured while in custody, attend to the persons needs.
- 95. Advise the immediate supervisor on duty immediately.
- 96. Except in the case of an emergency, do not enter the detention cell unless accompanied by another officer, preferably of the same sex as the person.
- 97. Administer first aid, if you are qualified and it is required.

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98. Request immediate medical attention and arrange for an ambulance.
99. Ensure that the CID or responding police agency who will be receiving custody of the individual is apprised of the situation, including details concerning the hospital or clinic where the person has been taken and the officers suspicions concerning the cause of the ailment (e.g. existing medical condition, attempted suicide, etc.).
100. If the person requires hospital treatment or to be taken to a clinic, arrange to accompany them with another officer.

Note: One accompanying officer should be the arresting officer, and at least one should be the same sex as the person.

Dispensing Prescription Medication

101. Request permission from the immediate supervisor on duty to dispense medication on the request of the person.
102. In all instances where the immediate supervisor on duty does not approve the persons' request, arrange for immediate medical attention.
103. Ensure a second officer is present when prescription medications are provided to the person.

Note: For the purposes of the above section "a second officer" means: two BSOs, one BSO and an immediate supervisor; one BSO and one officer from another government department, or one BSO and one officer from the police agency of jurisdiction.

104. In all cases where a syringe must be used to administer prescription medication, attain the services of a medical practitioner to administer the medication. Where an emergency situation precludes this, advise the immediate supervisor on duty and request they contact a medical facility immediately for instructions.

Note: Except under extreme emergency circumstances, CBSA personnel will not directly administer medication (i.e., via syringe/needle) regardless of their medical training (i.e., paramedic). The CBSA does not have the appropriate medical equipment available should a person have a negative reaction to medication administered.

105. Prior to complying with a request for access to prescribed medications, ensure:

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- a) the name on the medication container matches the name of the person;
 - b) there is only one type of pill in the container;
 - c) the container label and contents do not appear to be tampered with or substituted;
 - d) the medication is given and self-administered in accordance with the directions on the container label; and
 - e) the date and time of the last dosage administered as stated by the person held in custody, is consistent with directions written on the label and with the request of the person.
106. When complying with a request for administration of prescribed medication, note the following in your notebook and the detention log:
- a) Persons' name;
 - b) name of medication, type of container, and the dosage;
 - c) date and time medication was provided;
 - d) officers name and badge number;
 - e) name and badge number of second officer present;
 - f) name and badge number of immediate supervisor on duty who authorized the request;
 - g) date and time of the last dosage as stated by the person; and
 - h) the person's signature.
- Note: If the person refuses to provide a signature, make notes to this effect.
107. Only provide a single dose of prescription medication at one time.
108. Do not allow the person in custody to have care and control of the full prescription medication under any circumstances.
109. In instances where:
- a) doubt exists regarding the content of the container;

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- b) the person requested medications in excess of the prescribed dosage;
- c) the person refuses prescription medication;
- d) the person exhibits signs of alcohol or drug consumption; or
- e) doubt exists regarding the safety of the person, officer, or other person present;

Advise the immediate supervisor on duty to contact the prescribing physician, a physician at a medical facility, or arrange for an ambulance to attend.

REFERENCES

- 110. Royal Canadian Mounted Police (RCMP) Policy and Procedures
Ontario Provincial Police (OPP) Policy and Procedures
Ottawa-Carleton Regional Police Services Policy and Procedures

CBSA ENFORCEMENT MANUAL

Part 6

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 3

ARREST AND DETENTION OF YOUNG PERSONS POLICY AND PROCEDURES

12/07/11

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Arrest and Detention of Young Persons

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to search, arrest, and detain young persons when the search, arrest, and detention is lawful and is conducted in accordance with the *Youth Criminal Justice Act* and these policy and procedure guidelines.

DEFINITIONS

2. Refer to Part 11 - Glossary.

AUTHORITIES

Note: In addition to the requirements on arrest and detention legislated by the *Youth Criminal Justice Act*, all authorities for arrest and detention as per the *Criminal Code*, *Charter of Rights and Freedoms*, and the *Customs Act* apply to young persons. Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures, Authorities.

Youth Criminal Justice Act

3. Subsection 25(2) – States that every detained or arrested young person must be advised that they have the right to retain and instruct counsel and be given an opportunity to do so.
4. Subsection 25(9) – A statement that a young person has the right to be represented by counsel must be included in or attached to all documents.
5. Subsection 26(2) – Stipulates that upon issuance of an appearance notice and release of a young person their parent must be advised in writing.
6. Subsection 26(4) – States that if a parent cannot be located or is unavailable then notice will be given to:
 - a) an adult relative known to them and likely to assist; or
 - b) an adult known by them and likely to assist.
7. Subsection 26(6) – States that any notice given must include:
 - a) the young persons' name,
 - b) the charge against them,

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- c) the time and place of appearance, and
 - d) a statement that the young person has a right to retain and instruct counsel.
- 8. Subsection 26(8) – Advises that a notice given in writing may be served personally or be sent by confirmed delivery service.
- 9. Subsection 30(7) – Requires peace officers to transfer arrested young persons held in custody as soon as practicable to the police so that they may be placed in a designated temporary facility.
- 10. Subsection 146(2) – An oral or written statement given by a young person is only admissible when:
 - a) the statement was voluntary;
 - b) before the statement was made, the officer clearly explained in language appropriate to their age and understanding that:
 - i. they are under no obligation to give a statement;
 - ii. any statement given by them may be used as evidence in proceedings against them;
 - iii. they have the right to consult another person in accordance with paragraph (c); and
 - iv. any statement made by them is required to be made in the presence of counsel and any other person consulted in accordance with paragraph (c), if any, unless the young person desires otherwise;
 - c) before the statement was made, they were given a reasonable opportunity to consult with:
 - i. counsel; and
 - ii. a parent, or in the absence of a parent, an adult relative, or in the absence of a parent and an adult relative any other appropriate adult chosen by the young person; and
 - d) where they consult any person pursuant to paragraph (c), they have been given a reasonable opportunity to make the statement in the presence of that person.

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11. Subsection 146(3) – The requirements set out in paragraph (2)(b), (c), and (d) do not apply to oral statements if they are made spontaneously by the young person before the officer has a reasonable opportunity to comply with the requirements.
12. Subsection 146(4) – A young person may waive their rights under paragraph (2)(c) or (d) but the waiver must be videotaped or be made in writing. When it is in writing, it must contain a statement signed by the young person that they have been apprised of the right being waived.

PURPOSE AND SCOPE

13. The purpose of this policy is to provide guidelines on the search, arrest, and detention of young persons in accordance with the *Youth Criminal Justice Act* whenever a Border Services Officer (BSO) is in a legal position to search, arrest, or detain a young person whether it is under the *Customs Act* or the *Criminal Code*.
14. This chapter is to be used in conjunction with Part 6, Chapter 1, Arrest and Detention, Chapter 2, Care and Control of Persons in Custody, and Chapter 6, Personal Search.
15. This policy applies to all BSOs in the performance of their duties under the *Customs Act*, *Criminal Code*, or the *Excise Tax Act*.

BACKGROUND

16. The *Youth Criminal Justice Act* (YCJA) came into force on April 1, 2003, replacing the *Young Offenders Act*. It contains special provisions respecting young persons 12 years of age or more, but under 18 years of age. It focuses on the importance of accountability, the protection of society, the special needs of young persons, and their rights. The YCJA intends to ensure that the nature of the system's response to an offence should reflect the needs and individual circumstances of a young person.
17. The YCJA is based on a "Declaration of Principles", which state the intention of the Act pertaining to dealings with young offenders. It asserts that the youth justice system must reflect the fact that young persons lack the maturity of adults. It also recognizes that the youth system must be different from the adult system in many respects, including that accountability is consistent with young persons' reduced level of maturity, procedural protections are enhanced, rehabilitation and reintegration are given special emphasis, and the importance of timely intervention is recognized.

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Note: See Appendix A for a copy of the *Youth Criminal Justice Act* "Declaration of Principles".

18. While the *Young Offenders Act* permitted the use of alternative measures, the YCJA goes further by providing guidance as to the appropriate use of alternative measures, the types of alternatives, and what their objectives should be. Alternatives offered include Extrajudicial Measures that increase the use of effective and timely non-court responses to less serious offences, expanded Youth Sentencing options, and Custody and Supervision opportunities not previously offered.

POLICY GUIDELINES

General

19. BSOs must comply with all policies and procedures related to the arrest and detention of young persons, including any procedures developed by the responding policy agency.
20. BSOs must explain what is occurring to young persons in a manner that is appropriate to their age and level of understanding.

Reading the Reason for Arrest or Detention, Rights and Caution

21. A BSO must read the reason for arrest or detention, rights and caution verbatim to any person being arrested or detained.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures paragraphs 33-42.

22. BSOs will confirm the age of the person under arrest or detention by using the person's identification. If no identification is available, BSOs will request that the person state his/her age.
23. BSOs must explain to the young person the reason for the arrest or detention, his/her rights, and the caution again in words that are appropriate to the age and level of understanding of the young person.

Contacting Counsel and Parent, Guardian or Other Adult

24. BSOs must advise arrested or detained young persons that they have the right to contact and consult with counsel and a parent, guardian, or if unavailable any other appropriate adult (e.g., guardian, relative, friend of

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family), as long as that person is not a co-accused, or under investigation, in respect of the same offence, and allow them the opportunity to do so before they make any statement either orally or in writing.

25. BSOs must advise arrested or detained young persons of these rights at the time of arrest or detention using language that is appropriate to their age and level of understanding.
26. BSOs will also explain to young persons that their wish to contact their parent or an appropriate adult person does not negate their right to contact counsel.
27. BSOs will not contact any person on behalf of the young person unless they are expressly asked to do so by that young person. If so requested, BSOs should note this request in their notebook.
28. BSOs must advise the young person that he/she has the right to contact counsel and a parent, guardian or any other adult person, who is not a co-accused, without delay at any stage in the proceedings and must remind the young person periodically of this right.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures for guidelines paragraphs 33-42.

29. Following the arrest or detention of a young person, BSOs may continue any questioning but must strictly follow this policy and procedures, otherwise, any additional information obtained beyond the point of arrest or detention may not be admissible as evidence in court.
30. BSOs are legally obligated to allow an arrested or detained young person to consult with both counsel and a parent, guardian or other adult, who is not a co-accused, before the young person makes any statement either orally or in writing in accordance with subsection 146(2) of the *Youth Criminal Justice Act*.
31. If it is his/her wish, a young person must be given the opportunity to have private, face-to-face conversations for a reasonable period of time with his/her parent or other appropriate adult person and/or counsel prior to the taking of any statement.

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32. Prior to any further questioning or the taking of any statement, if the young person chooses to waive his/her right to contact counsel, a parent, guardian or other appropriate adult, the young person must complete the *Youth Criminal Justice Act – Waiver of Right to Consult a Person* (E368-2)

Note: See Appendix B for a copy of form E368-2.

33. Any statement made by the young person is required to be made in the presence of counsel and any other person consulted, if any, unless the young person desires otherwise. If the young person chooses to waive this right, the young person must complete the *Youth Criminal Justice Act – Waiver of Right to Consult a Person* (E368-2).

Note: See Appendix B for a copy of form E368-2.

Handcuffing

34. Based on risk, officers have the authority to handcuff persons who are lawfully arrested or detained. Officers must assess the risk and act on reasonable grounds when deciding to handcuff a person. Reasonable grounds may include, but are not limited to, threat posed to the officer, another officer, members of the public, protecting the person, potential flight risk, and/or preventing the destruction of evidence.
35. Handcuffs will not be used on persons under 12 years of age.

Note: Officers must use their judgement and discretion, and must not jeopardize officer or public safety.

Care and Control in Custody

36. Young persons detained in custody are to be kept separate from detained adults.

Note: The YCJA requires that young persons who are detained in custody be kept separate from “adult” offenders. The exception to this requirement is in cases of temporary restraint immediately following their arrest. As CBSA detentions are considered only temporary restraints it is not a legal requirement, however, it is CBSA policy to hold young persons separate from adults.

37. Young persons under arrest and held in custody must be transferred into police custody as soon as is practicable so that they may be placed in a designated temporary facility.

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Note: YCJA refers to designated temporary facilities as youth facilities that have been designated for temporary detention by the province.

Contacting Police

38. When contacting police, BSOs must advise them of the fact that they are dealing with a young person.

Appearance Notice and Notice to Parent or Other Appropriate Adult

39. Where a designated officer has issued a Form 5.1 *Youth Criminal Justice Act* - Appearance Notice to a Young Person they must complete a Form 3.1 *Youth Criminal Justice Act* - Notice to Parent or other Appropriate Adult.

Note: Refer to Part 6, Chapter 7, *Criminal Code* Offences Policy and Procedures for guidelines pertaining to the issuance of Appearance Notices.

Note: See Appendix C for a copy of Form 3.1 *Youth Criminal Justice Act* – Notice to Parent or other Appropriate Adult.

Note: See Appendix D for a copy of Form 5.1 *Youth Criminal Justice Act* – Appearance Notice to a Young Person.

40. Where a parent is not available, designated officers must complete a Form 3.1 *Youth Criminal Justice Act*

Note: Refer to Part 6, Chapter 7, *Criminal Code* Offences Policy and Procedures for guidelines pertaining to the issuance of Appearance Notices.

41. A written notice to parent, guardian, adult relative, or other adult may be served personally or sent by mail.

Personal Search

Note: Refer to Part 6, Chapter 6, Personal Search Policy and Procedures for detailed guidelines.

42. Officers will advise young persons of their right to consult a parent or other appropriate adult person **and** counsel in a manner that is appropriate to their age and level of understanding if, prior to conducting a personal search of a young person.
43. Officers will allow a parent or other appropriate adult to be present during a personal search if this is the young person's wish and if that person can attend the CBSA office where the search is to be conducted within a

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reasonable time after being initially contacted. The parent or other appropriate adult will be allowed to be present during a personal search unless they create undue risk to officer or public safety.

Note: There is no legal obligation to allow a parent or other appropriate adult person to be present during a personal search. It is CBSA policy, however, to extend this privilege.

ROLES AND RESPONSIBILITIES

Border Services Officers (BSOs)

44. BSOs are responsible for abiding by this policy and procedures.

CBSA Superintendents

45. CBSA Superintendents are responsible for:

- a) ensuring BSOs abide by this policy and procedures; and
- b) taking the appropriate disciplinary action against breaches of this policy and procedures.

Intelligence and the Criminal Investigations Division (CID)

46. Intelligence and the Criminal Investigations Division is responsible for:

- a) developing, modifying, and approving all policies related to enforcement activities pertaining to young persons;
- b) providing guidance to the field in enforcement activities related to young persons; and
- c) monitoring adherence to this policy and procedures by the regions.

PROCEDURES

Rights and Cautions

- 47. Read the reason for arrest, rights, and caution verbatim from your notebook to the young person.
- 48. Ascertain if the person you are dealing with is in fact a young person by asking them their age and requesting to see identification.

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49. Explain in words appropriate to their age and understanding the reason for their arrest, their rights, and the caution, and what they mean if they are a young person.
50. Record in your notebook what you explained and any responses given by the young person.

Contacting Counsel and Parent or Other Person

51. Advise the arrested young person that they may call their parent or, if they are unavailable, another appropriate adult person (i.e., guardian, relative, friend of family) and, if they wish, allow them a reasonable opportunity to do so.
52. Advise the arrested young person of their right to contact and consult counsel.
53. Allow all reasonable opportunity for the young person to contact counsel.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures for guidelines pertaining to contacting counsel.

54. Explain to the young person that their wish to contact their parent or an appropriate adult person does not negate their right to contact counsel.
55. Inform the young person of the existence and availability of the applicable systems of duty counsel, free preliminary legal advice, and legal aid in the jurisdiction.
56. Refrain from questioning the young person until they have been able to talk to a parent or appropriate adult person and/or counsel.
57. Provide a private room that is in the view of the BSOs and ample time for the young person to consult with their parent or appropriate adult person and/or counsel if this is their wish.
58. Complete in full the *Young Criminal Justice Act – Waiver of Right to Consult a Person* (E368-2), if a young person wishes to waive their right to contact a parent or other appropriate adult person.

Note: See Appendix B for a copy of form E368-2.

59. Clearly write down the details of a young person's waiver of their right to contact counsel if this is their wish and have the young person sign the waiver.

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60. Advise the young person that they can change their mind and proceed to exercise their right to contact a parent or appropriate adult person and/or counsel at any time even if they have previously chosen to give a statement without speaking to, or having present, a parent or appropriate adult and/or counsel.

Statements from Young Persons

61. The following steps must occur before a young person makes a voluntary statement:
- a) Advise the young person that they are under no obligation to make a statement.
 - b) Advise them that any statement made by them may be used as evidence in proceedings against them.
 - c) Caution the young person that they have the right to consult counsel and a parent or other appropriate adult.
 - d) Caution the young person that any statement they make must be made in the presence of counsel and/or a parent or other appropriate adult, unless the young person desires otherwise.
 - e) Give the young person a reasonable opportunity to consult with counsel and a parent or other appropriate adult.

Note: A parent or other appropriate adult chosen by a young person must not be a co-accused, or be under investigation regarding the same offence.

- f) Give the young person a reasonable opportunity to give the statement in the presence of the person with whom they have consulted, if consultation with counsel and/or a parent or other adult has occurred.

Note: All explanations made to the young person must be in language appropriate to their age and understanding.

62. If they decline to contact counsel, instruct the young person to make a statement in writing indicating that they have been informed of their right to retain and instruct counsel and have waived this right, and have them sign it.

Care and Control in Custody

63. Place the young person alone in the detention cell or secure area of the CBSA facility whenever possible.

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Arrest and Detention of Young Persons

64. Do not place young persons in a detention cell or secure area of the CBSA facility with any adult.

Note: Refer to Part 6, Chapter 2, Care and Control of Persons in Custody Policy and Procedures for detailed detention guidelines.

Appearance Notice and Notice to Parent or Other Person

69. BSOs will ensure that the agency of jurisdiction (e.g. local police agency) is in agreement with proceeding with the formal court process prior to the officer issuing the Appearance Notice. If the police agency is not in agreement, the agency of jurisdiction can attend and consider other options.
70. If you have issued an Appearance Notice (*Youth Criminal Justice Act* Form 5.1) to a young person, and, if the parent is available, issue a Notice to the parent (*Youth Criminal Justice Act* Form 3.1). Include:
- a) the name of the young person;
 - b) the charge against the young person;
 - c) the time and place of appearance; and
 - d) a statement that the young person has the right to be represented by counsel.

Note: See Appendix C for a copy of Form 3.1 *Youth Criminal Justice Act* and Appendix D for a copy of Form 5.1 *Youth Criminal Justice Act*.

71. If you have issued an Appearance Notice (*Youth Criminal Justice Act* Form 5.1) to a young person, and, a parent is not available but another adult with a legal duty to the young person is available, issue a Notice (*Youth Criminal Justice Act* Form 3.1) to the other adult. Include:
- a) the name of the young person;
 - b) the charge against the young person;
 - c) the time and place of appearance; and
 - d) a statement that the young person has the right to be represented by counsel.

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Arrest and Detention of Young Persons

72. Serve a copy of the Appearance Notice to the parent or other appropriate adult person if they are present. If not, forward the documents by mail to the designated individual.

Personal Search

Note: Refer to Part 6, Chapter 6, Personal Search Policy and Procedures for detailed guidelines.

73. Advise the young person of their right to contact a parent or other appropriate adult person **and** counsel prior to conducting a personal search.
74. Allow a parent or other appropriate adult person to be present during the personal search of a young person if it is the young persons wish and if the parent or other adult can attend the CBSA office where the search is to be conducted within a reasonable time after initial contact with the parent or other adult. The parent or other appropriate adult will be allowed to be present during a personal search unless they create undue risk to officer or public safety.

Note: There is no legal obligation to allow a parent or other appropriate adult person to be present during a personal search if it is the young person's wish. It is CBSA policy, however, to extend this privilege.

REFERENCES

75. *Customs Act*
Youth Criminal Justice Act
Young Offenders Act
Criminal Code
Charter of Rights and Freedoms

Part 6

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 3

**ARREST AND DETENTION OF YOUNG PERSONS POLICY AND
PROCEDURES**

Appendix A

**YOUTH CRIMINAL JUSTICE ACT
DECLARATION OF PRINCIPLE**

12/07/11

APPENDIX A

**YOUTH CRIMINAL JUSTICE ACT
DECLARATION OF PRINCIPLE**

“Policy for Canada with respect to young offenders

3. (1) The following principles apply in this Act:

- (a) the youth criminal justice system is intended to
 - (i) prevent crime by addressing the circumstances underlying a young person's offending behaviour,
 - (ii) rehabilitate young persons who commit offences and reintegrate them into society, and
 - (iii) ensure that a young person is subject to meaningful consequences for his or her offence in order to promote the long-term protection of the public;
- (b) the criminal justice system for young persons must be separate from that of adults and emphasize the following:
 - (i) rehabilitation and reintegration,
 - (ii) fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity,
 - (iii) enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their right to privacy, are protected,
 - (iv) timely intervention that reinforces the link between the offending behaviour and its consequences, and
 - (v) the promptness and speed with which persons responsible for enforcing this Act must act, given young persons' perception of time;
- (c) within the limits of fair and proportionate accountability, the measures taken against young persons who commit offences should
 - (i) reinforce respect for societal values,
 - (ii) encourage the repair of harm done to victims and the community,
 - (iii) be meaningful for the individual young person given his or her needs and level of development and, where appropriate, involve the parents, the extended family, the community and social or other agencies in the young person's rehabilitation and reintegration, and

EN Part 6 Chapter 3

Arrest and Detention of Young Persons

APPENDIX A

(iv) respect gender, ethnic, cultural and linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements; and

(d) special considerations apply in respect of proceedings against young persons and, in particular,

(i) young persons have rights and freedoms in their own right, such as a right to be heard in the course of and to participate in the processes, other than the decision to prosecute, that lead to decisions that affect them, and young persons have special guarantees of their rights and freedoms,

(ii) victims should be treated with courtesy, compassion and respect for their dignity and privacy and should suffer the minimum degree of inconvenience as a result of their involvement with the youth criminal justice system,

(iii) victims should be provided with information about the proceedings and given an opportunity to participate and be heard, and

(iv) parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour.

(2) This Act shall be liberally construed so as to ensure that young persons are dealt with in accordance with the principles set out in subsection (1).

Part 6

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 3

**ARREST AND DETENTION OF YOUNG PERSONS POLICY AND
PROCEDURES**

Appendix B

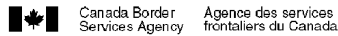
**SAMPLE YOUTH CRIMINAL JUSTICE ACT – WAIVER OF RIGHT TO
CONSULT A PERSON (E368-2)**

12/07/11

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Arrest and Detention of Young Persons

APPENDIX B



YOUTH CRIMINAL JUSTICE ACT WAIVER OF RIGHT TO CONSULT A PERSON

LOI SUR LE SYSTÈME DE JUSTICE PÉNALE POUR LES ADOLESCENTS RENONCIATION AU DROIT DE CONSULTER

Date	Time – Heure
Location – Endroit	

I
Je, _____,
residing at
domicilié(e) à _____
born on
né(e) le _____,
declare being informed that I am detained concerning
déclare avoir été informé(e) que je suis présentement détenu(e) concernant _____

I have also been informed of my right to consult counsel and a parent. In the absence of my parent, I can consult with any other adult. This other adult may be another relative, or in the absence of a relative, any other adult of my choice, providing that person is not a co-accused or under investigation in respect to the same offence. I am also aware that the person of my choice can be present when I make this statement.

J'ai également été informé(e) que je peux me prévaloir de mon droit de consulter un avocat et un parent. En l'absence d'un parent, je peux consulter toute autre personne adulte. Cet autre adulte peut être une personne apparentée ou, en l'absence d'une telle personne, un autre adulte de mon choix, pourvu que cette personne ne soit pas coaccusée ou ne fasse pas l'objet d'une enquête relative à la même infraction. Je suis également au courant que la personne de mon choix peut être présente lorsque je fais cette déclaration.

I hereby renounce

Par la présente, je renonce à

- ☐ my right to consult counsel;
me prévaloir de mon droit de consulter un avocat;
- ☐ my right to consult my parent or another person;
me prévaloir de mon droit de consulter un parent ou une autre personne;
- ☐ that a person of my choice be present at my statement.
ce qu'une personne de mon choix assiste à la prise de ma déclaration.

Signature	Witnesses – Témoins
_____	_____

Part 6

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 3

**ARREST AND DETENTION OF YOUNG PERSONS POLICY AND
PROCEDURES**

Appendix C

**FORM 3.1 *YOUTH CRIMINAL JUSTICE ACT* – NOTICE TO PARENT OR
ADULT WITH A LEGAL DUTY TO A YOUNG PERSON**

12/07/11

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Arrest and Detention of Young Persons

APPENDIX C

Form 3.1
Subsection 26(1)

In the Youth Justice Court for {district}

NOTICE to a parent or adult with a legal duty to a young person

Canada
{province / territory, district}

A young person's right to legal counsel. The young person has the right to have a lawyer provided to advise and represent him/her. The young person can hire their own lawyer, can ask Legal Aid for a lawyer, or can ask a Judge in the Youth Justice Court to appoint a lawyer for him/her.

To: {name of responsible adult}

A peace officer has reasonable grounds to believe that {name of young person} broke the law by:

{set out offence(s)}

{name of young person} has a right to be represented by a lawyer in court.

We believe that you are {his / her}:

- ☐ parent
- ☐ legal guardian
- ☐ adult relative {-- specify relationship, if known}, or
- ☐ an adult who knows this young person and is likely to be of assistance to the {him/her}.

This notice is to inform you that {name of young person}:

- ☐ has been arrested regarding the offence(s) and is being detained {place and address}.
- ☐ has received an appearance notice
- ☐ has made a promise to appear
- ☐ has entered into a recognizance
- ☐ has been commanded by summons to appear

{date}

{place}

{name of signator}

{title of signator}

Contact # for further information _____

Part 6

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 3

**ARREST AND DETENTION OF YOUNG PERSONS POLICY AND
PROCEDURES**

Appendix D

**FORM 5.1 *YOUTH CRIMINAL JUSTICE ACT* – APPEARANCE NOTICE TO A
YOUNG PERSON**

12/07/11

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Arrest and Detention of Young Persons

APPENDIX D

Form 5.1
Criminal Code
Sections 496, 497

In the Youth Justice Court for {district}

**Appearance Notice by a Peace Officer
To a Young Person not yet charged with an Offence**

Canada
{province / territory, district}

A young person's right to legal counsel The young person has the right to have a lawyer provided to advise and represent him/her. The young person can hire their own lawyer, can ask Legal Aid for a lawyer, or can ask a Judge in the Youth Justice Court to appoint a lawyer for him/her.

To: {name of young person} of {address}

A peace officer has stated that he/she has reasonable grounds to believe that you committed the following offence(s):

{set out offence(s)}

☐ You must go to the Youth Justice Court at {place}, on {date}, at {time} in order to be dealt with according to law.

☐ You must go to {place}, on {date}, at {time} for the purposes of the *Identification of Criminals Act*.
[Ignore if not filled in]

This is to warn you that it is a criminal offence, under subsection 145(5) of the *Criminal Code*, for you to fail to comply with either of these directions, where it applies to you, unless you have a lawful excuse for not going.

{time}

{date}

{place}

{name of peace officer}

{title - peace officer, etc.}

{signature of the peace officer}

{signature of the young person}

CUSTOMS ENFORCEMENT MANUAL

Part 6

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 4

FOREIGN REPRESENTATIVES POLICY AND PROCEDURES

30/03/04

EN Part 6 Chapter 4

Foreign Representatives

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to afford foreign representatives their privileges and immunities as required under federal and international law.

DEFINITIONS

2. Refer to Part 11 - Glossary.

AUTHORITIES

3. Immunities for foreign missions and international organizations, which includes diplomatic missions and consular posts, hereafter known as foreign representatives, are set out in federal law by the:

- a) *Foreign Missions and International Organizations Act* (1991); and
- b) *Privileges and Immunities (North American Treaty Organization) Act* (1985)

in accordance with the international laws of the:

- c) Vienna Convention on Diplomatic Relations (1961);
- d) Vienna Convention on Consular Relations (1963); and
- e) Convention on the Privileges and Immunities of the United Nations (1946).

Note: Where there are inconsistencies between the *Foreign Missions and International Organizations Act* and any other federal or provincial legislation, the Act prevails.

Foreign Missions and International Organizations Act

4. Article 26 – Affords freedom of movement and travel within Canada to members of foreign missions.
5. Article 31.1 – Allows diplomatic agents immunity from the criminal, civil, and administrative jurisdiction of Canada.
6. Article 31.2 – Affirms that a diplomatic agent is under no obligation to give evidence as a witness.

EN Part 6 Chapter 4

Foreign Representatives

7. Article 36.1 – States that Canada permits the entry of and grants exemption from all Customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:
 - a) articles for the official use of the mission;
 - b) articles for the personal use of a diplomatic agent or members of his family forming part of his household, including articles intended for his establishment.
8. Article 36.2 – Declares that the personal baggage of a diplomatic agent is exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this Article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of Canada. In these cases, inspections must only be conducted in the presence of the diplomatic agent or of his authorized representative.
9. Article 41.1 – Instructs that, without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of Canada.

PURPOSE AND SCOPE

10. The purpose of this policy is to provide guidelines to customs officers regarding their authorities pertaining to foreign representatives and the rights and privileges of these individuals as set out in federal and international law.
11. This policy applies to all CBSA officers.

BACKGROUND

12. Canada is obliged under federal and international law to grant certain immunities and privileges to diplomatic personnel and foreign representatives that have significant implications for customs officers. Immunities are protections from law enforcement processes and are founded on principles of international conduct. Those entitled to immunities include members of diplomatic missions, consular posts, and international organizations, collectively referred to in this document as foreign representatives.

EN Part 6 Chapter 4

Foreign Representatives

13. The international community has acknowledged that foreign representatives must not be subject to any possible interference, pressure, or harassment by the receiving state if they are to perform their functions efficiently. Immunities, however, are not for the benefit of individuals. Canada, therefore, does not accept the abuse of immunities by foreign representatives. Without prejudice to their immunities, they have a duty to respect the laws and regulations of Canada.
14. The Office of Protocol at Foreign Affairs Canada (FAC), regulates the immunities of foreign representatives in Canada. While most foreign representatives are conscientiously law-abiding, some may commit offences, but their immunities do not exonerate them. After Customs has dealt with offences by foreign representatives, the Royal Canadian Mounted Police (RCMP) will be advised. The RCMP will liaise with FAC. Either the RCMP or FAC will take action against offenders as warranted by the nature, the gravity, and the circumstances of the offences. The provision of information to the RCMP is covered under a 1991 agreement between the two agencies and is in accordance with section 107 of the *Customs Act*.
15. In March 2001, the Office of Protocol, FAC, developed an impaired driving policy (see Appendix C). The policy applies to officials of embassies, high commissions, consular posts, and foreign organizations in Canada. The policy is based on the position that the operation of a motor vehicle by persons enjoying privileges and immunities in Canada is not a right but a privilege.
16. Under the Office of Protocol, FAC, Impaired Driving Policy, foreign representatives will lose their driving privileges at the first instance of an impaired driving related offence. The loss of privilege will occur on the basis of a Customs or police report substantiating that a foreign representative was driving while impaired. FAC encourage police forces to lay charges for impaired driving related offences, but will take action to revoke the foreign representative's licence regardless of whether charges are laid.

POLICY GUIDELINES

Foreign Representatives

Identification of Foreign Representatives

17. Officers will only recognize identity cards issued to foreign representatives by the Office of Protocol, FAC. FAC identify cards are the only form of identification that positively establishes the identity and the status of persons claiming immunities in Canada.

EN Part 6 Chapter 4

Foreign Representatives

Note: Refer to D-Memorandum 21-1-1 Customs Privileges for Diplomatic Missions, Consular Posts, and International Organizations for the correct alpha coding of diplomatic, consular, international organization, and United Nations personnel identity cards issued by the Office of Protocol, FAC and Appendix A, Categories of Persons Entitled to Customs Privileges under the *Foreign Missions and International Organizations Act* (FMIO).

18. Officers will not recognize identity cards issued to foreign representatives by any state other than Canada.
19. Upon first arrival in Canada, foreign representatives may not have been issued an identity card yet and may only have a diplomatic, consular, or official passport from their home country. Diplomatic passports do not automatically grant diplomatic privileges. Officers must verify the status of these persons by contacting the Office of Protocol – FAC, RCMP Diplomatic Security Liaison officer, at (613) 992-8055 or after hours at (613) 292-1723.
20. Officers may treat persons claiming immunity as they would any other person encountered during the course of performing their normal duties if they cannot produce an Office of Protocol issued foreign representative identity card that indicates their designation.

Note: It is important to note that at a consular post, there are two types of consular officers. The “honorary consular officers” (i.e. Honorary Consul Generals, Honorary Consuls, Honorary Vice-Consuls and Honorary Consular Agents), are Canadian citizens or permanent residents of Canada, and therefore are not entitled to any customs privileges or other immunities, with the exception of acts performed in the course of their official duties (i.e. examination of diplomatic/consular bags). Refer to Memorandum D21-1-1.

Offences by Foreign Representatives

21. Officers must respect the immunities of foreign representatives even if they are committing or have committed an offence under any Act of Parliament.

Note: Failure to do so may cause international embarrassment to Canada, and may expose the officers themselves to serious legal consequences. Such actions may also result in the reciprocal mistreatment of Canadian foreign representatives abroad.

EN Part 6 Chapter 4

Foreign Representatives

22. Officers will not arrest, detain, or handcuff:

- a) a Diplomatic Agent or members of their family who are part of their household;
- b) a Consular Officer or members of their family who are part of their household;
- c) Administrative or Technical staff of a **diplomatic mission**, who are not Canadian citizens or permanent residents of Canada, or members of their family who are part of their household;
- d) Representatives or Senior Officials of an international organization; or
- e) Representatives or Experts of the United Nations.

Note: See Appendix A for General Guidelines on Customs Enforcement Actions Against Foreign Representatives.

23. Officers may intervene with foreign representatives to stop the commission or the continuation of the commission of an offence.

Note: Intervention may consist of strong verbal persuasion, removal of goods, ignition keys, or conveyance from the person's possession, and, as long as it does not involve touching the foreign representative or blocking the person from re-entering the driver's seat of a vehicle. It may also consist of assisting them to find an alternate means of transportation, contacting the person's diplomatic mission, consulate, organization, etc., contacting the police, or contacting the Office of Protocol - FAC ((613) 992-8055) and requesting and acting on their advice.

24. Officers will report, through their superintendent, all serious Customs infractions and *Criminal Code* offences committed by foreign representatives by calling:

- a) Manager, Contraband Programs Section, Policy and Contraband Programs Division, Customs Contraband, Intelligence and Investigations (CCII) at (613) 954-7593; and
- b) Office of Protocol – FAC, RCMP Diplomatic Security Liaison officer, at (613) 992-8055 or after hours at (613) 292-1723.

EN Part 6 Chapter 4

Foreign Representatives

25. In incidences involving impaired driving, a form E641 *Criminal Code* Incident Report is completed, and forwarded by fax to:
- a) Manager, Contraband Programs Section, Policy and Contraband Programs Division, CCII, (613) 952-9863; and
 - b) Office of Protocol – FAC, RCMP Diplomatic Security Liaison officer, (613) 943-8801.

Firearms

26. If an officer has absolute certain knowledge that foreign representatives with alpha code “J” or “white” identity cards possess a firearm on their persons, they may be treated the same as a regular traveller. They are obligated to have the required documents. Unreported firearms may be seized.

Note: Refer to D21-1-1 for a listing of foreign representatives identity cards and their alpha codes.

Note: “Absolute certain knowledge” is formed if the person has declared the firearm or if the officer has seen an undeclared firearm on the person.

27. If an officer has absolute certain knowledge that foreign representatives with alpha code “D”, “C”, “I”, or United Nations “Laissez-Passer” identity cards possess firearms on their person but do not have the necessary paperwork, they will request that they surrender the weapon immediately. The same applies to prohibited devices, ammunition, weapons and other goods regulated under the *Firearms Act*. These items should be turned over to the RCMP.

Note: Refer to D21-1-1 for a listing of foreign representatives identity cards and their alpha codes.

Note: Refer to Part 2 Chapter 3, Firearms and Weapons.

28. In the event of a foreign representatives’ (alpha code “D”, “C”, “I”, or United Nations “Laissez-Passer” identity cards) refusal to comply, officers will record the offence in their notebook without seizing or confiscating the firearm.
29. Officers will report, through their superintendent, all incidences of unacceptable firearm possession by foreign representatives by calling:
- a) the Manager, Contraband Programs Section, Policy and Contraband Programs Division, Customs Contraband, Intelligence and Investigations (CCII) at (613) 954-7593; and,

- b) the Office of Protocol, FAC, RCMP Diplomatic Security Liaison officer at (613) 992-8055 or after hours at (613) 292-1723.

Impaired Driving Related Offences

- 30. Designated officers will request identification from a foreign representative to determine whether or not they are entitled to diplomatic privileges when the officer has reasonable and probable grounds to believe the foreign representative has committed an impaired driving related offence. This includes operating a motor vehicle or vessel, operating or assisting in the operation of an aircraft or railway equipment, and having care and control of a motor vehicle, vessel, aircraft or railway equipment whether it is in motion or not.
- 31. Designated officers will take such reasonable measures as are necessary to ensure that a foreign representative that has care and control of a vehicle, vessel or aircraft is not a threat to the public safety or to themselves.
- 32. Designated officers with reasonable grounds to suspect that a foreign representative who has care and control of a vehicle is committing an impaired driving related offence, will so inform the foreign representative and request that they take an Approved Screening Device (ASD) or an Approved Breath Analysis Instrument (ABAI) test.

Note: Persons with **diplomatic immunity** are not obligated to submit to such tests, nevertheless, they may wish to agree to the request in order to establish that they are not driving while committing an impaired related offence.

Note: The ASD or ABAI "Demand" as provided in officer notebooks or cards is NOT to be utilized in situations with foreign representatives, since they are simply "requested" to take the tests.

- 33. If a foreign representative agrees to take an ASD and fails, designated officers will proceed by first advising them that they have the right to retain and instruct counsel, caution them against making any statements, and give them every reasonable opportunity to contact counsel. The officer may also request that the foreign representative take an ABAI. The local police should be contacted and advised.

Note: Officers are not to make an arrest.

EN Part 6 Chapter 4

Foreign Representatives

34. In cases of suspected impaired driving related offences, regardless of whether they have taken the ASD, designated officers will contact the police agency of jurisdiction and request their attendance and that charges are laid, regardless of the immunity of the person concerned.
35. Designated officers will not allow a foreign representative driver whom they have reasonable grounds to suspect of an impaired driving related offence to leave the area in the vehicle that has been stopped unless that person is in the care of another person willing and able to assume responsibility for the vehicle.
36. Designated officers may arrange for the vehicle to be moved to a secure location for public safety reasons and the protection of the vehicle.
37. In cases where an officer believes that it would be unsafe for a foreign representative to continue driving, (i.e. a "WARN" on the ASD, or indicators such as the strong smell of alcohol on breath), the officer will request that they park the vehicle and wait until their level of sobriety improves.
38. Should a foreign representative refuse to comply with a request to park their vehicle based on the officers' judgement that it would be unsafe for them to continue to drive, designated officers may keep them in temporary protection and call the foreign representatives Mission or FAC, Office of Protocol.

Note: FAC has indicated that they will not intervene in cases where an officer has prevented a foreign representative, even one with diplomatic status, from driving, where the officer has acted in accordance with this policy and to protect public safety.

Note: "Temporary protection" may be established through strong verbal persuasion or by removing the ignition keys or conveyance. As long as it does not involve touching the foreign representative, officers may block the driver from re-entering the driver seat of the vehicle.

Note: See Appendix B for a listing of provincial and territorial Office of Protocol addresses and phone numbers.

39. Although under certain circumstances designated officers may undertake temporary protection, they must not detain, arrest, or handcuff a foreign representative with diplomatic immunity.
40. Should a foreign representative become violent or threaten to use a weapon, officers may protect their security, the public safety, and eliminate the danger.

EN Part 6 Chapter 4

Foreign Representatives

Note: Section 27 of the *Criminal Code* authorizes individuals to use as much force as is necessary to prevent the commission of an offence.

Note: Refer to Part Six, Chapter Five, Use of Force.

41. Officers will immediately report, through their superintendent, all cases of impaired driving related offences by foreign representatives, suspected or otherwise by calling:
 - a) the Manager, Contraband Programs Section, Policy and Contraband Programs Division, Customs Contraband, Intelligence and Investigations (CCII) at (613) 954-7593; and
 - b) the Office of Protocol, FAC, RCMP Diplomatic Security Liaison officer at (613) 992-8055 or after hours at (613) 292-1723.
42. Officers will complete a form E641 *Criminal Code* Incident Report and, even if formal charges have not been laid, fax it through the superintendent to:
 - a) Manager, Contraband Programs Section, Policy and Contraband Programs Division, CCII, (613) 952-9863 and,
 - b) Office of Protocol – FAC, RCMP Diplomatic Security Liaison officer, (613) 943-8801.

Note: Refer to Part Six, Chapter Eight, *Criminal Code* Offences, Appendix C for a copy of the E641.

ROLES AND RESPONSIBILITIES

Customs Officers

43. Customs officers are responsible for:
 - a) adhering to this policy and procedures;
 - b) respecting the immunities of foreign representatives and any family members that are afforded immunities;
 - c) reporting offences by foreign representatives to their superintendent; and

EN Part 6 Chapter 4

Foreign Representatives

- d) completing a *Criminal Code* Incident Report (E641) in all cases involving a foreign representative, suspected or otherwise, of an impaired driving related offence.

Superintendents

44. Superintendents are responsible for:

- a) ensuring compliance with this policy and procedures;
- b) respecting the immunities of foreign representatives and any family members that are afforded immunities;
- c) contacting the Office of Protocol - FAC for advice when requested and/or necessary;
- d) reporting all offences by foreign representatives to the Manager, Contraband Programs Section, Policy and Contraband Programs Division, Customs, Contraband, Intelligence and Investigations (CCII);
- e) reporting all serious Customs infractions and *Criminal Code* offences by foreign representatives to the Office of Protocol – FAC, RCMP Diplomatic Security Liaison officer; and
- f) ensuring breaches of this policy or procedures are dealt with accordingly.

Customs Contraband, Intelligence and Investigations

45. Customs Contraband, Intelligence and Investigations (CCII) is responsible for:

- a) developing and modifying these policies and procedures as required;
- b) providing guidance and support to the field;
- c) reviewing all reports of offences committed by foreign representatives;
- d) liaising with the Office of Protocol – FAC, RCMP Diplomatic Security Liaison officer; and
- e) confirming all serious offences/infractions committed by foreign representatives have been reported to the Office of Protocol – FAC, RCMP Diplomatic Security Liaison officer.

PROCEDURES

Foreign Representatives

Offences by Foreign Representatives

46. Through the superintendent, consult the Office of Protocol – FAC, RCMP Diplomatic Security Liaison officer at (613) 992-8055 or after hours at (613) 292 -1723 when you require advice on the immunities of foreign representatives.
47. Notate all offences by foreign representatives in case prosecution is eventually allowed.
48. Report, through the superintendent, all serious Customs infractions and *Criminal Code* offences committed by foreign representatives by calling the Manager, Contraband Programs Section, Policy and Contraband Programs Division, CCII at (613) 954-7593.
49. Report serious infractions and offences by foreign representatives to the Office of Protocol - FAC, RCMP Diplomatic Security Liaison officer at (613) 992-8055 or after hours at (613) 292-1723 (messages for the officer to return your call can also be left at 1-800-387-3124).

Impaired Driving Related Offences

Non-Designated Officers

50. If you encounter the driver of a vehicle bearing diplomatic, consular, or “other representative” licence plates and reasonable grounds exist to suspect them of an impaired driving related offence:
 - a) suspend primary questioning;
 - b) advise the superintendent/office that a designated officer is required and that you are dealing with a foreign representative;
 - c) resume Customs primary questioning;
 - d) turn over control of the interview to the designated officer as soon as possible; and
 - e) make detailed notes about the occurrence.

EN Part 6 Chapter 4

Foreign Representatives

Note: The Province of Ontario issues red licence plates to foreign representatives with the following prefixes:

- i) "CD" – Diplomatic agents and members of the family (includes International Organizations)
- ii) "CC" – Consular Officers and members of the family
- iii) "XT" - Other staff at diplomatic missions, consular posts and international organizations
- iv) "XO" – Taipei Economic and Cultural Offices as well as Hong Kong and Economic Trade Office

51. If a designated officer is not available:

- a) complete any required Customs processing;
- b) release the person and, to prevent the continuation of the offence, request the driver voluntarily park the vehicle and seek alternate transportation;
- c) assist the driver to find an alternative means to continue their journey (e.g. contacting the Mission or a member of the driver's family, or arranging for public transportation);
- d) immediately report the details of the incident to the police agency of jurisdiction if the driver fails to park the vehicle;
- e) immediately report all incidents of impaired driving related offences, suspected or otherwise, involving foreign representatives through your superintendent to FAC – Office of Protocol, RCMP Diplomatic Security Liaison officer at (613) 992-8055 or after hours at (613) 292-1723 (messages for the officer to return your call may also be left at 1-800-387-3124);
- f) maintain accurate and detailed notes for the entire time that you spend with a foreign representative suspected or otherwise of impaired driving related offences, and, in particular, record objective substantiation of the evidence of impairment;

Note: This is very important, as FAC may take action even when formal charges have not been laid.

- g) complete a *Criminal Code* Incident Report (E641);

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Foreign Representatives

Note: Refer to Part Six, Chapter Eight, *Criminal Code Offences*, Appendix C for a copy of the E641.

- h) forward the E641 through your superintendent to the Office of Protocol-FAC, RCMP Diplomatic Security Liaison Officer in Ottawa via facsimile. The facsimile number is (613) 943-8801; and
- i) forward a copy of the E641 through your superintendent to the Manager, Contraband Programs Section, Policy and Contraband Programs Division, CCII at (613) 952-9863.

Designated Officers

- 52. If you encounter the driver of a vehicle bearing diplomatic, consular, or "other representative" licence plates and reasonable grounds exist to suspect them of an impaired driving related offence, request the driver present identification to determine whether or not they are entitled to diplomatic privileges.

Note: The Province of Ontario issues red licence plates to foreign representatives with the following prefixes:

- i) "CD" – Diplomatic agents and members of the family (includes International Organizations);
- ii) "CC" – Consular Officers and members of the family;
- iii) "XT" - Other staff at diplomatic missions, consular posts and international organizations;
- iv) "XO" – Taipei Economic and Cultural Offices as well as Hong Kong and Economic Trade Office

Note: Diplomatic passports do not automatically grant diplomatic privileges.

Note: See Appendix A for General Guidelines on Customs Enforcement Actions Against Foreign Representatives.

- 53. If a foreign representative only provides a diplomatic, consular, or official passport from the country employing them and does not have a FAC issued identity card, contact the Office of Protocol - FAC through your superintendent to confirm the person's status by calling the RCMP Diplomatic Security Liaison officer at (613) 992-8055 or after hours at (613) 292-1723 (messages for the officer can also be left at 1-800-387-3124).

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Foreign Representatives

54. If a foreign representative cannot provide a foreign representative identity card, or if the person cannot provide a diplomatic, consular or official passport, which can be used to confirm his status with FAC's Office of Protocol, treat them as you would any other person while performing the normal duties of an officer.

55. Inform foreign representatives suspected of an impaired driving related offence of your suspicion and ask them to take a voluntary ASD or ABAI test.

Note: Persons with **diplomatic immunity** are not obligated to submit to such tests, nevertheless, they may wish to agree to the request in order to establish they are not driving while impaired.

Note: The ASD or ABAI "Demand" as provided in officer notebooks or cards is NOT to be utilized in situations with foreign representatives, since they are simply "requested" to take the tests.

56. If a foreign representative agrees to take an ASD and fails, advise them that they have the right to retain and instruct counsel, caution them against making any statements, and give them every reasonable opportunity to contact counsel if this is their wish. The officer may also request that the foreign representative take an ABAI. The local police should be contacted and advised of the situation.

57. Take all reasonable measures to prevent foreign representatives suspected of impaired driving related offences from operating any vehicle. Such measures include:

- a) strong verbal persuasion;
- b) removal of the ignition keys;
- c) removal of the vehicle to a secure area;
- d) preventing the driver from re-entering the driver seat of the vehicle;
- e) assisting the driver to find an alternate means to continue their journey by:
 - i) contacting the Mission or a member of the drivers' family; or
 - ii) arranging for public transport
 - iii) contacting the police; and/or

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Foreign Representatives

- f) contacting the Office of Protocol – FAC, RCMP Diplomatic Security Liaison officer at (613) 992-8055 or after hours at (613) 292-1723 (messages for the officer to return your call can also be left at 1-800-387-3124) and requesting and acting on their advice.

Note: FAC has indicated that they will not intervene in cases where designated Customs officers have prevented a foreign representative, even one with diplomatic status, from driving, where they have acted in accordance with this policy and to protect public safety.

- 58. If you have reasonable grounds to suspect a foreign representative driver of an impaired related offence, do not allow them to leave the area in the vehicle they arrived in unless that person is in the care of another person willing and able to assume the responsibility and drive the vehicle.
- 59. In cases where you believe that it would be unsafe for a foreign representative to continue driving (i.e. a WARN on the ASD, or indicators such as the strong smell of alcohol on breath), request that they park the vehicle and wait until their level of sobriety improves.
- 60. Should they refuse to comply with the request to park the vehicle and wait until their level of sobriety improves:
 - a) keep them in temporary protection; and
 - b) contact the foreign representatives' Mission.

Note: "Temporary protection" may be established through strong verbal persuasion or by removing the ignition keys or conveyance. As long as it does not involve touching the foreign representative, officers may block the driver from re-entering the driver seat of the vehicle.

Note: Although under certain circumstances designated officers may undertake temporary protection, remember foreign representatives with diplomatic immunity cannot be detained, arrested, or handcuffed.

- 61. If contact with the foreign representatives' Mission is not possible, contact the Office of Protocol – FAC, RCMP Diplomatic Security Liaison officer at (613) 992-8055 or after hours at (613) 292-1723 (messages for the officer can also be left for the officer at 1-800-387-3124).

Note: Temporary protection can be maintained until another foreign representative from the person's Mission takes over responsibility for the person or until instructions from Office of Protocol – FAC, RCMP Diplomatic Security Liaison officer are received.

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Foreign Representatives

62. Contact the police agency of jurisdiction in all cases where there are reasonable grounds to believe a foreign representative driver of an impaired driving related offence, regardless of their immunity, and request they attend and lay criminal charges.
63. Immediately report all incidents of impaired driving related offences, suspected or otherwise, involving foreign representatives through your superintendent to FAC – Office of Protocol, RCMP Diplomatic Security Liaison officer at (613) 992-8055 or after hours at (613) 292-1723 (messages for the officer to return your call can also be left at 1-800-387-3124 in emergencies).
64. Maintain accurate and detailed notes for the entire time that you spend with foreign representatives, suspected or otherwise, of impaired driving related offences.
65. Provide objective substantiation of the evidence of impairment in all notes and reports concerning foreign representatives involved in impaired driving related offences, including those where the person has maintained their right not to take an Approved Breath Analysis Instrument test.

Note: This is very important, as FAC may take action even when formal charges have not been laid.

Note: It is also important to document the type of evidence that will be accepted by the courts in your jurisdiction to support a charge of an impaired driving related offence.

66. Complete a *Criminal Code* Incident Report (E641) for all incidents involving foreign representatives suspected or otherwise of an impaired driving related offence.

Note: Refer to Part Six, Chapter Eight, *Criminal Code* Offences, Appendix C for a copy of the E641 Criminal Code Incident Report.

67. Forward the E641 Criminal Code Incident Report through your superintendent to the Office of Protocol FAC-RCMP Diplomatic Security Liaison Officer in Ottawa via facsimile. The facsimile number is (613) 943-8801.
68. Forward a copy of the E641 Criminal Code Incident Report through your superintendent to the Manager, Contraband Programs Section, Policy and Contraband Programs, Division, CCII. The fax number is (613) 952-9863.

REFERENCES

69. *Foreign Missions and International Organizations Act* (1991)
Privileges and Immunities (North American Treaty Organization) Act (1985)
Vienna Convention on Diplomatic Relations (1961)
Vienna Convention on Consular Relations (1963)
Convention on the Privileges and Immunities of the United Nations (1946).
Policy on Impaired Driving – DFAIT Protocol
D-Memorandum 21-1-1, Customs Privileges for Diplomatic Missions,
Consular Posts, and International Organizations

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SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 4

FOREIGN REPRESENTATIVES POLICY AND PROCEDURES

Appendix A

**GENERAL GUIDELINES FOR CUSTOMS ENFORCEMENT ACTIONS
AGAINST FOREIGN REPRESENTATIVES**

30/03/04

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Foreign Representatives

APPENDIX A

GENERAL GUIDELINES FOR CUSTOMS ENFORCEMENT ACTIONS
AGAINST FOREIGN REPRESENTATIVES

Diplomatic Personnel

Category	Arrest and Detention	Personal Search	Vehicle Search	Baggage Search	Prosecution	Recognized Dependents
Diplomatic Agents	NO	NO	NO	NO	NO	SAME
Admin. & Technical Staff	NO	NO	NO	USA – NO Other State-YES*	NO	SAME
Service Staff.	YES	YES	YES	YES*	YES	NONE

Consular Personnel

Category	Arrest and Detention	Personal Search	Vehicle Search	Baggage Search	Prosecution	Recognized Dependents
Career Officers	Yes for Serious Crime w/warrant only.	NO	YES	NO	Not for acts performed in the course of their official duties.	SAME
Honorary Officers	YES	YES	YES	YES*	Not for acts performed in the course of their official duties.	NONE
Admin. & Technical Staff	YES	YES	YES	YES*	Not for acts performed in the course of their official duties.	NONE
Service Staff	YES	YES	YES	YES*	YES	NONE

* The search of baggage of any person associated with a diplomatic mission or consular post must take into consideration that the person may be carrying "archives" (i.e. files, correspondence), and these documents will not be searched under any circumstances. If a person claims to be carrying "archives", these must be excluded from search.

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International Organizations Personnel

Category	Arrest and Detention	Personal Search	Vehicle Search	Baggage Search	Prosecution	Recognized Dependents
Reps and Senior Officials	NO	NO	NO	NO	Not for acts performed in the course of their official duties.	NONE
Officials	YES	YES	YES	YES	YES	NONE

United Nations Personnel

Category	Arrest and Detention	Personal Search	Vehicle Search	Baggage Search	Prosecution	Recognized Dependents
Reps and Experts	NO	NO	NO	NO	Not for acts performed in the course of their official duties.	NONE
Officials	YES	YES	YES	YES	YES	NONE

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SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

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FOREIGN REPRESENTATIVES POLICY AND PROCEDURES

Appendix B

FEDERAL, PROVINCIAL, AND TERRITORIAL OFFICES OF PROTOCOL

30/03/04

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FEDERAL, PROVINCIAL, AND TERRITORIAL
OFFICES OF PROTOCOL

Federal Office of Protocol

Canada

Office of Protocol
Foreign Affairs Canada
125 Sussex Drive
Ottawa, Ontario
K1A 0G2
Telephone No.: (613) 992-8055 (or after hours (613) 292-1723)
Fax: (613) 943-8801

Provincial and Territorial Offices of Protocol

British Columbia - Victoria

Mr. David N.S. Harris, M.V.O., C.D., A. de C.
Chief of Protocol of British Columbia
Protocol and Events Branch
Department of Governmental Services
553 Superior Street, 2nd floor
Victoria, British Columbia
V8W 9V1

Telephone No.: 250-356-1138
Fax No.: 250-356-2814

Alberta - Edmonton

Mrs. Betty Anne Spinks
Chief of Protocol
Executive Council
1201 Legislature Annex
9718 - 107 Street
Edmonton, Alberta
T5K 1E4

Telephone No.: 780-422-2236
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Mrs. Emily Anderson
Deputy Chief of Protocol

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Foreign Representatives

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Saskatchewan - Regina

Mr. Michael Jackson, L.V.O., C.D.
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Protocol Office
1919 Saskatchewan Drive, 10th floor
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Telephone No.: 306-787-3001
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Manitoba - Winnipeg

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Director of Protocol of Manitoba
Executive Council Office
Legislative Building, Room 338
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Ontario - Toronto

Mr. Roy Brent Norton
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and Chief of Protocol
Office of International Relations and Protocol
Ministry of Economic Development and Trade
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Foreign Representatives

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Nova Scotia - Halifax

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Chief of Protocol of Nova Scotia
Protocol Office
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P.O. Box 1617
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Fax No.: 902-424-4309
Web Site: www.gov.ns.ca

New Brunswick - Fredericton

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Foreign Representatives

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Prince Edward Island - Charlottetown

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C1A 7N8

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Newfoundland and Labrador - St. John's

Mr. David Dempster
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P.O. Box 8700
St. John's, Newfoundland and Labrador
A1B 4J6

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Northwest Territories - Yellowknife

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Department of the Executive
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Yellowknife, Northwest Territories
X1A 2L9

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Foreign Representatives

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Yukon Territory - Whitehorse

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Y1A 2C6

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Nunavut - Iqaluit

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SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 4

FOREIGN REPRESENTATIVES POLICY AND PROCEDURES

Appendix C

OFFICE OF PROTOCOL POLICY RELATING TO IMPAIRED DRIVING AND OTHER SERIOUS TRAFFIC OFFENCES

30/03/04

APPENDIX C

Office of Protocol, Department of External Affairs and International Trade

UNCLASSIFIED

CIRCULAR NOTE NR. XDC-0427

Impaired Driving Policy

The Department of Foreign Affairs and International Trade presents its compliments to Their Excellencies the Heads of Missions accredited to Canada and to the international organizations established in Canada, and has the honour to inform them of the Department's revised policy with respect to instances where persons with diplomatic, consular or equivalent status in Canada are alleged to be driving while impaired, or to have committed other serious traffic offences.

The Department reminds Heads of Missions that, pursuant to Article 41 (1) of the Vienna Convention on Diplomatic Relations and Article 55 (1) of the Vienna Convention on Consular Relations, it is the duty of all persons enjoying privileges and immunities to respect the laws and regulations of the receiving State, without prejudice to their privileges and immunities. The Department's revised policy is based upon that principle, as well as the position that the operation of a motor vehicle by persons enjoying privileges and immunities in Canada is not a right but a privilege. In implementing the policy, the Department will be guided by the paramount importance of ensuring the protection and safety of Canadians and others in Canada including members of the diplomatic community. At the same time, the Department reiterates the importance it attaches to the Vienna Conventions and its commitment to respect the obligations contained therein.

Policy Relating to Impaired Driving or Other Serious Traffic Offences

Stopping of Vehicles with Diplomatic Licence Plates: On reasonable suspicion that the driver of a vehicle bearing diplomatic or consular licence plates has consumed alcohol or is otherwise impaired, police forces may stop the vehicle and request the driver to present identification. Persons enjoying consular immunity are covered by the policy set out in the Department's Note No. XDC-4146 and may be required to submit to roadside screening and breathalyser tests. Notwithstanding the privileges and immunities the driver may enjoy, police forces may take such reasonable measures as are necessary to ensure that the driver is not a threat to public safety or to himself or herself. Such measures may include requests to establish whether the person's co-ordination or faculties are affected by alcohol or other substances. In the event that a police officer assesses that the driver is impaired, the officer will so inform the driver and may request that he or she take a roadside screening test or a breathalyser test. Persons enjoying diplomatic immunity are not obligated to submit to such tests, but may nevertheless wish to agree to the request in order

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to establish that they are not driving while impaired. If the police officer continues to have a reasonable suspicion that the driver is impaired, he or she will take all reasonable measures to prevent the driver from operating the vehicle. Such measures may include removal of the keys and preventing the driver from re-entering the vehicle. The police will offer assistance to the driver to find an alternative means to continue his or her journey by, *inter alia*, contacting the Mission or a member of the driver's family, or arranging for public transportation. The police will not permit a driver, for his or her own safety, to leave the area where the vehicle has been stopped unless that person is in the care of another person willing and able to assume that responsibility. For public safety reasons and the protection of the vehicle, the police may arrange for the vehicle to be moved to a safe location. The Department will not intervene in cases where police forces have prevented a person with diplomatic status from driving, where the police have acted in accordance with this policy and to protect public safety.

Subsequent Actions: In every case where the Department receives a police report on an incident where police forces have intervened to prevent a person enjoying immunity from driving in the interests of public safety, the Department will contact the relevant Head of Mission in writing and inform him or her of the incident and the allegations of the police. The Department will inform the Head of Mission that police forces or other authorities may lay criminal charges. The Department will request in writing that the sending State waive administrative immunity so that the Department may hold the licence of the individual concerned and contact the relevant authorities to seek the suspension of that licence for a period of up to one year. If the sending State agrees to waive immunity for this purpose, a note will be required from the Mission to the Department confirming the waiver of immunity. Alternatively, the Department may accept a written undertaking by the Head of Mission that he or she will ensure that the person concerned will not drive in Canada for a period of up to one year. In the event that a person, whose privilege to drive in Canada has been suspended, fails to respect this condition of his or her continued assignment in Canada, the Department will immediately request that person's recall.

Criminal Charges: In cases of impaired driving or other major traffic offences, police forces have been encouraged by the Department to lay charges under the *Criminal Code of Canada*, regardless of the immunity of the person concerned. In accordance with the Vienna Convention on Diplomatic Relations, police forces shall not detain or arrest a person with diplomatic status.

Should a person enjoying immunity be charged with impaired driving or another major traffic offence, the Department will contact the Head of Mission to formally request the sending State to waive immunity. In the event that the sending State waives immunity, the Department will notify the appropriate local authorities. The Department expects that the person charged will comply with the decision of

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the court where the matter is adjudicated, including the payment of any fines and the completion of any mandatory education or treatment programs.

Should the sending State decide not to waive the immunity, the Department may accept a written undertaking by the Head of Mission that he or she will ensure that the person charged will not drive in Canada for a period of at least one year.

In the event that a person, whose privilege to drive in Canada has been suspended, fails to respect this condition of his or her continued assignment to Canada, the Department will immediately request his or her recall.

In the absence of an acceptance of one of the aforementioned options, the Department will request the recall of the individual.

Repeated Incidents or Other Serious Traffic Offences: If a person enjoying privileges and immunities is involved in a second instance of impaired driving, or is charged with a traffic offence involving death or injury, the Department will request the relevant Mission to waive immunity. If the sending State decides not to waive immunity, the Department will require the person concerned to leave Canada. In some exceptional circumstances, the Department may require the individual to leave Canada even in cases where the sending State agrees to waive immunity.

Conclusion: The Department recognizes that the vast majority of persons enjoying privileges and immunities in Canada comply with their duty to respect local laws. However, the failure of even a small minority of persons to respect Canadian laws can lead to tragic consequences for Canadians and the persons involved. For this reason, the Department is determined to work closely with police forces to rigorously implement the policy on impaired driving. In this regard, the police will be informed in writing of any action taken by the Department pursuant to a report received by the Office of Protocol related to impaired driving or other serious traffic offences. The Department requests that Missions review the revised policy with their personnel across Canada to ensure that the policy is clearly understood. The Department wishes to inform Heads of Missions that their co-operation in ensuring that this policy is fully respected is both appreciated and expected. The Department will consider transgressions of this policy by persons accredited to Canada, including failures to respect undertakings made pursuant to this policy, as the responsibility of the Head of Mission. The Office of Protocol would be pleased to provide any further clarification of this policy.

The Department of Foreign Affairs and International Trade avails itself of this opportunity to renew to Their Excellencies the Heads of Missions accredited to Canada and to the international organizations established in Canada the assurances of its highest consideration.

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Use of Force

CUSTOMS ENFORCEMENT MANUAL

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SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 5

USE OF FORCE POLICY AND PROCEDURES

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Use of Force

Please refer to the following link for all related policies on the Use of Force:

[Arming Reference Manual](#)

CBSA ENFORCEMENT MANUAL

Part 6

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 6

PERSONAL SEARCH POLICY AND PROCEDURES

23/02/12

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to detect, detain, arrest, and to conduct personal searches on persons entering Canada suspected of having concealed contraband on or about their person (i.e. body packed, swallowed, within body cavities).

DEFINITIONS

2. Refer to chapter 11 – Glossary.

AUTHORITIES

Customs Act

3. Section 11.2 – allows the designation of areas as customs controlled areas. Section 11.3 – owners or operators of customs controlled areas may grant access to authorized or prescribed persons only.
4. Section 98 – provides that a border services officer (BSO) may search any person who the officer suspects on reasonable grounds has goods concealed on or about their person that may contravene the Act, could be evidence of a contravention of the Act, or the importation or exportation of which is prohibited, controlled, or regulated by this or any other act of Parliament. The person has the right to be taken before a senior officer to object to the search. It is up to the senior officer at this point to determine if there are reasonable grounds to conduct a search. Only officers of the same sex as a person may search them and if an officer of the same sex is not available, an officer may authorize any suitable person of the same sex to perform the search. The authority is limited to:
 - a) any person who has arrived in Canada, within a reasonable time after their arrival,
 - b) any person about to leave Canada, at any time prior to their departure, or
 - c) any person who has had access to an area designated for persons leaving Canada and has left the area, but has not left Canada, within a reasonable time after they leave the designated area.

Note: The Supreme Court of Canada has interpreted that Section 98 extends to searches to determine whether goods are concealed within the body.

EN Part 6 Chapter 6

Personal Search

5. Section 99.2 – authorizes a border services officer to search a person, including prescribed persons or members of a prescribed class of persons, leaving a customs controlled area, if they have reasonable grounds to suspect the person has goods concealed on or about their person that may contravene the act, could be evidence of a contravention of the Act, or the importation or exportation of which is prohibited, controlled, or regulated by this or any other act of Parliament. The person has the right to be taken before a senior officer to object to the search. It is up to the senior officer to determine if there are reasonable grounds to conduct a search. Only officers of the same sex as the person will search them and if an officer of the same sex is not available, an officer may authorize any suitable person of the same sex to perform the search.

Proceeds of Crime (Money Laundering) and Terrorist Financing Act

6. Section 15 – authorizes border services officers to search any person, if they have reasonable grounds to suspect that a person has concealed currency or monetary instruments that are greater than the amount prescribed on or about their person and have not reported it. The person has the right to be taken before a senior officer to object to the search. It is up to the senior officer to determine if there are reasonable grounds to conduct a search. Only officers of the same sex as a person may search them and if an officer of the same sex is not available, an officer may authorize any suitable person of the same sex to perform the search. The authority is limited to persons:
 - a) arriving in Canada, within a reasonable time after their arrival,
 - b) about to leave Canada, at any time prior to their departure, or
 - c) who has had access to an area designated for persons leaving Canada and has left the area but has not left Canada, within a reasonable time after they leave the designated area.

The Canadian Charter of Rights and Freedoms

7. Section 8 – states everyone has the right to be secure against unreasonable search or seizure.
8. Section 9 – states everyone has the right not to be arbitrarily detained or imprisoned.
9. Section 10 – states everyone has the right on arrest or detention:
 - a) to be informed promptly of the reasons for arrest or detention;

- b) to retain and instruct counsel without delay and to be informed of that right; and
 - c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.
- 10. In *R. v. Simmons*, the Supreme Court of Canada held that for persons entering Canada, the degree of personal privacy reasonably expected at customs is lower than it is in most situations. Searches performed by customs officers are reasonable based on a standard of reasonable grounds to “suspect”.
- 11. In the *R. v. Monney* decision, the Supreme Court of Canada re-affirmed the decision of *R. v. Simmons* and held that the authority of section 98 extends to the collection of body wastes. Customs officers have the authority to detain persons for the purposes of collecting samples of bowel movements under monitored conditions where they have reasonable grounds to “suspect” these wastes contain evidence of a contravention.
- 12. The Supreme Court of Canada has divided the types of searches that customs officers perform into three categories based on the *Charter* issues. The categories are as follows:
 - a) The first category of search involves the routine questioning of persons arriving in Canada, the inspection of baggage, pockets, wallets, and purses, and the pat down of outer clothing. The Court viewed these as part of routine processing, which does not raise *Charter* concerns.

 Note: See Part Four, Chapter Three, Personal Baggage, Goods, and Conveyance Examination Policy and Procedures for guidelines pertaining to pocket searches for evidence.
 - b) The second category of search is that which involves the removal of clothing (disrobement). Searches of the second category are viewed as detentions that invoke rights such as the right to be informed of the reasons for the detention and the right to retain and instruct counsel. For a category two search, which includes the collection of body wastes, officers must have “reasonable grounds” to suspect that the person has secreted contraband on or about his/her body.
 - c) The third category is that which involves actual physical contact for examination of the body, (i.e., the administration of x-rays, or the probing of body cavities). A third category search must be considered to be, at a minimum, also a detention.

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Personal Search

Note: Neither category two or three searches are considered “routine” processes and are deemed to constitute a detention within the meaning of Section 9 of the *Canadian Charter of Rights and Freedoms*.

Criminal Code of Canada

13. Section 2 – defines border services officers as “peace officers” when performing any duty in the administration of the *Customs Act*.
14. Section 25 – states that as “peace officers” border services officers, with reasonable grounds, are justified in using only as much force as is necessary to complete a search.

Note: Refer to Part Six, Chapter Five, Use of Force Policy and Procedures.

15. Section 26 – states that officers who use excessive force are criminally responsible for their actions.

BACKGROUND

16. For years, border services officers have been detecting persons who have swallowed drugs, inserted drugs into body orifices, and/or packed currency and/or drugs around their bodies to circumvent the law and bring it illegally into Canada. Although less prevalent, other contraband such as jewellery has been smuggled in this manner as well.
17. To discover if suspicions of contraband concealed on or about a person are correct, it may be necessary to conduct a personal search. Border services officers have the authority to conduct personal searches in accordance with section 98 of the *Customs Act*.
18. In terms of legal authorities in this regard, in *R. v Monney*, the Supreme Court of Canada ruled that under section 98 of the *Customs Act*, a customs officer may search a traveller, providing the officer suspects on reasonable grounds that contraband has been “secreted on or about his person” and that the search occurs “within a reasonable time” of the person’s arrival in Canada. The phrase “secreted on or about his person” not only refers to prohibited material on or about the surface of a person’s body but also secreted or concealed within their body.

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Personal Search

19. The Supreme Court ruling further stated that the actions of the customs officers in detaining Monney in a “drug loo facility” and conducting a “bedpan vigil” amounted to a search within the second of the three categories of border searches established in the *Simmons* case and were reasonable for the purposes of section 8 of the Charter.
20. The Court found that a passive “bedpan vigil” is not as invasive as a body cavity search or medical procedures such as the administration of emetics.

PURPOSE AND SCOPE

21. The purpose of this policy is to guide border services officers in the personal search, including monitored bowel movements and cavity search, of persons suspected of attempting to smuggle contraband.
22. This chapter is an extension of Part Six, Chapter One, Arrest and Detention and Chapter Two, Care and Control of Persons in Custody and must be used in conjunction with them.
23. This policy applies to all border services officers.

POLICY GUIDELINES

Approval

24. After completing all routine customs processing, if a border services officer has reasonable grounds to suspect that a person has secreted contraband on or about their body, they will convey their suspicions to a senior officer.

Note: If border services officers are processing more than one traveller, reasonable grounds must be established for each individual and officers must be able to articulate their suspicions for each individual traveller.

25. Border Services officers must obtain approval from a senior officer to proceed with the detention of a person for a personal search.

Note 1: If border services officers are obtaining approval for more than one traveller, they must obtain this approval for each traveller.

Note 2: A personal search may include a monitored bowel movement. If the search involves monitored bowel movements or a visit to a medical facility, the approval must be in writing.

Rights and Cautions

26. Prior to undergoing a personal search under section 98 of the *Customs Act*, a person must be under detention and, therefore, must be advised of their rights and cautioned and given the opportunity to contact counsel.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

27. Persons must be directed to read the section 98 poster or section 98 in the *Customs Act*.
28. If persons have difficulty reading, officers will read the provision of section 98 to them.
29. Persons must be asked if they understand section 98 and be asked whether they wish to consult a senior officer.
30. If a person does not understand Section 98, its meaning must be explained to them in words or a language that is understood. After the meaning of section 98 is explained to the traveller in a language that is understood, the officer should take notes of what was explained to the traveller.
31. Officers must take reasonable steps to obtain an interpreter or other suitable person capable of speaking the language of a person when a language barrier is identified.
32. Persons using an interpreter or other suitable person must be re-informed through the interpreter or other suitable person of the detention, their right to retain and instruct counsel, and of section 98, all prior to the commencement of any search.
33. Statements made by an individual prior to their detention and/or arrest may be considered to be spontaneous utterances and may be admissible into evidence. These statements, and the circumstances in which they were made, should be recorded into the notebooks of officers. Persons who admit to unlawful conduct, and who have not been previously cautioned concerning the making of statements, should be cautioned concerning the making of further statements.
34. Officers must record in their notebooks the time at which the rights/cautions were given, the answers received when asked if the rights/cautions were understood, as well as the decision made by the person concerning contacting counsel and being taken before a senior officer.

Contesting Grounds under Section 98

35. When a person requests to speak to a senior officer, or elects to contest the reasonable grounds for a search under section 98, the officer requesting the search will advise a senior officer of the reasonable grounds.

Note: At ports of entry where a senior officer (i.e. superintendent, chief, manager) is not available, border services officers will telephone the closest CBSA office where a senior officer is in charge. Persons will be allowed to talk to the senior officer by telephone.

36. The searching officer will ensure that the person has had the opportunity to verbally advise the senior officer of their objection.
37. When a person talks to a senior officer, the senior officer must deliver a secondary caution.
38. Senior officers will assess reasonable grounds and decide whether the search is to take place. The senior officer reviewing the grounds cannot be the same person who approved the original request to conduct the search. If a second senior officer is not available, one must be contacted by phone.

Note: In a case where a personal search is to be conducted on more than one traveller, the senior officer must hear the objections of any traveller in the group who requests a senior officer, or who contests the search. Reasonable grounds must be reviewed and approved for each traveller on an individual basis.

39. Senior officers who review the grounds for conducting a search must record in their notebook all contact with the suspect person(s), whether or not they approved or denied the personal search and the reasons for their decision.

Officer Health and Safety

40. If a frisk for officer safety has not yet been conducted, prior to entering the search room, immediately after a person has been advised of their rights or as a simultaneous action, a frisk must be performed as a safety precaution for the searching officers. All detainees are to be frisked prior to entering a search room.

Note: Refer to Chapter Six, Part One, Arrest and Detention Policy and Procedures for guidelines on conducting frisks for officer safety.

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41. Officers will discontinue personal searches when they find that because of a frisk for officer safety their reasonable grounds for conducting a further personal search have disappeared. For example, if an officer suspected the person of carrying a body pack and the frisk revealed no such pack, the personal search would be discontinued.
42. Officers conducting personal searches will wear protective gloves. Officers may also wear safety glasses and/or masks, if they feel it is necessary (e.g. when the person being searched is suspected of being a carrier of a life threatening virus or a communicable disease).
43. Officers will shield any breaks or lesions on their skin (i.e. with dressings, bandages, barrier creams, etc.) to protect them from contamination.
44. Officers will be especially careful when handling faeces and when they come into contact with bodily secretions such as blood, urine, sputum, vaginal secretions, saliva, and vomit or areas soiled by any of these.
45. The CBSA will fully support officers' decisions to discontinue a search at any point in a situation if, in their judgement, the search will pose undue risk to the safety of themselves, another officer or a member of the public.

Personal Search

Note: An Internal Carriers and Body Packers training course is recommended for all officers and supervisors involved in personal searches.

46. To justify a detention, officers will record in their notebook all reasonable grounds, indicators, and non-verbal and verbal responses, including inculpatory and exculpatory statements relating to a person.

Note: If an incident involves more than one traveller, reasonable grounds, indicators and non-verbal and verbal responses must be recorded for each individual traveller.

47. Officers must get the approval of a senior officer to perform a personal search.
48. Before a person is escorted into a search room, it must be made sterile and devoid of any loose articles.
49. All personal searches are to be conducted by an officer of the same sex as the person being searched.
50. An assisting officer of the same sex as the person must also be present.

Note: Refer to Appendix A, Authorizing Assistance for a Personal Search, for further instructions if two officers of the same sex as the person are not available.

51. Officers will keep persons undergoing a personal search under constant observation, as continuity of evidence must be maintained throughout the search process.
52. Officers will ensure that personal searches are conducted in a professional and dignified manner.
53. Officers will politely answer but without elaboration, particularly if an argument may result, when a person asks any questions.
54. Officers may ask a person to remove some or all clothing as is needed to conduct a personal search for contraband. The person is obligated to comply.
55. Officers may ask a person to bend over or squat at which time the vagina and anus areas may be viewed for indicators (strings, lubricants, etc.) that would suggest the insertion of foreign objects into the cavity. Persons may be asked to spread their buttocks.
56. When illicit contraband is found during a personal search, persons may immediately be placed under arrest, if circumstances warrant, and advised of the reason for the arrest, their right to retain and instruct counsel, and cautioned about making any incriminating statements.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

57. Officers will record the time of the arrest as well as all answers received to the rights and caution statements in their notebook and on the Personal Search/Arrest Report in ICES or for non-automated ports on a paper version of the form.
58. At the time of arrest, even if a person requests to contact counsel, personal searches already underway will be continued until completed. Upon completion of the search, persons must be allowed to contact counsel immediately.
59. At the conclusion of a search, officers will inform the person that the search is complete and, if they are no longer detained or under arrest, that they are free to leave.

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60. Unless they are still detained or have been arrested, officers will allow a person to get dressed in private.
61. Officers will watch detained and arrested persons closely as they dress in case there is a need to secure weapons such as needles or razor blades, or additional contraband that have been concealed but not discovered during the search.
62. Officers will escort detained or arrested persons to a detention cell, a secure area of the customs facility, or where applicable to a Specimen Isolation Unit (SIU) room or appropriate alternative.
63. When an enforcement action has resulted from a personal search, but the person is no longer being detained and has not been placed under arrest, officers will inform them that certain information is needed to complete the enforcement action and that their co-operation would be appreciated and will facilitate their departure from the CBSA area.

Note: Refer to Part Six, Chapter Two, Care and Control of Persons in Custody Policy and Procedures.

Use of Force to Complete Search

Note: Refer to Part Six, Chapter Five, Use of Force Policy and Procedures for detailed guidelines.

64. Officers should attempt to control difficult situations without jeopardizing their safety, the safety of another officer or a member of the public.

Note: Verbal intervention should be the principal method of trying to obtain a person's co-operation.

65. Officers will assess their ability to use force to conduct the search and are justified in using only as much force as necessary to conduct the search as long as they have reasonable grounds.

Note: Refer to Part Six, Chapter Five, Use of Force Policy and Procedures for detailed guidelines.

66. Officers may restrain a person, if they attempt to leave the CBSA area before undergoing a personal search. In addition, persons may be arrested for resisting, hindering, and/or wilfully obstructing a peace officer in the performance of their duties.

Body Packs

67. When body packs are discovered during the course of a frisk, personal search, or at any other time, persons may be placed under arrest immediately, advised of the reason for arrest, their right to retain and instruct counsel, and cautioned.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

68. As deemed necessary for evidentiary purposes, officers may take pictures of persons with body packs in place with their clothes on, in various stages of undress, and entirely disrobed.
69. Unless the subject is hostile, officers may allow persons to remove body packs themselves. If scissors or some other kind of cutting instrument is required, officers will complete the removal process.

Vaginal or Anal Inserts

70. When vaginal or anal inserts are discovered during the course of a personal search, persons may be placed under arrest immediately, advised of the reason for arrest, their right to retain and instruct counsel and cautioned about making any incriminating statements. It is recommended that the officers read the reasons for arrest, rights to counsel and cautions directly from their issued notebook insert CE1-1 Officers Reference Booklet.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

71. When vaginal or anal inserts are discovered during a personal search, officers will offer to call medical assistance and proceed to a medical facility, if requested by the person.
72. Under no circumstances will officers attempt to remove any objects from a person's body cavities.
73. Officers may allow persons to remove a vaginal or anal insert themselves, if they can remove the insert without complications and are willing to do so.
74. Officers may transport the person to a medical facility for removal of inserts:
- a) upon a person's request;
 - b) when a person is unwilling or unable to remove them themselves;

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- c) if officers believe that the risk of complications is great; or
- d) to confirm that all inserts have been removed.

Note: Refer to Part 6, Chapter 12 Transporting Persons Under Arrest or Detention.

Monitored Bowel Movements

- 75. Before a person may be detained for the purposes of a monitored bowel movement, all routine CBSA processing must be completed and a personal search conducted to eliminate the possibility that the person is importing contraband on their body, in their baggage, or in their vehicle (where applicable).
- 76. To proceed to a Specimen Isolation Unit (SIU) room or reasonable alternative for monitored bowel movements, a senior officer's approval and one of the following must occur:
 - a) the person admitted to ingesting drugs;
 - b) the person admitted to inserting drugs into a body cavity;
 - c) the officer has formulated by way of indicators the suspicion that the person has ingested drugs and a supervisor has given written approval based on these grounds; or
 - d) the officer has witnessed an orifice with suspect drugs inside.
- 77. Persons detained for the purposes of producing a bowel movement will be re-advised of the right to retain and instruct counsel, their right to be brought before a senior officer and be given as many additional opportunities to contact counsel as is reasonable.
- 78. A person who admits to carrying drugs internally may be placed under arrest, advised of the reason for arrest, advised of their right to retain and instruct counsel and cautioned about making any incriminating statements, but need not be turned over to the police until all evidence is produced.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

- 79. The health and safety of persons suspected of carrying drugs internally will be considered at all times.

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80. Medical assistance will be sought immediately at the first sign of illness or whenever a detained person requests medical attention.
81. All persons, regardless of condition, must be advised that medical assistance can and will be made available, if requested or required.
82. Monitored bowel movements will be conducted using an authorized SIU, a portable toilet or in cases where neither of these are available, a secured washroom facility.
83. Public washrooms will not be used as a secured washroom facility.
84. In the case of a secured washroom facility, such as a staff washroom, officers will turn off the main water source and empty any remaining water out of the toilet tank as a safeguard against the intentional or accidental disposal or destruction of any evidence produced.
85. If a person has produced three bowel movements and no contraband is found, the detention would normally be terminated.
86. At any point in a detention, where the officer believes the detention will exceed 24 hours, the person will be brought before a Justice of the Peace to have the grounds for detention reviewed. A detention cannot exceed 24 hours without such a review of the grounds.
87. A bowel movement that produces evidence of an offence may result in the immediate arrest of the person.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

Cases of Medical Emergency

88. Persons may experience medical complications as the result of inserting or ingesting drugs or complications caused by other medical conditions. In either case, medical assistance will be sought immediately.
89. When a person's health is in jeopardy, an ambulance will be called and one officer, of the same sex as the person, preferably the searching officer, must accompany the person in the ambulance to the medical facility.
90. Officers will ensure medical facility security is notified when there is a detained person in the facility.
91. Where medical staff determines that the person must stay in hospital, officers will ensure the police are contacted, advised of the particulars, and requested to attend.

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92. An officer must stay with persons at all times until they are turned over to the police.
93. Once discharged, persons will be transported back to the CBSA port following the approved policy and procedures.

X-rays, Probing, and Removal

94. The administration of x-rays and the probing of and removal of contraband from body cavities by medical personnel can only be performed when:
 - a) the person voluntarily provides an informed written consent; or
 - b) when they have been arrested and the x-ray/probe/removal is necessary for the health and safety of the person.
95. Officers are to utilize the expertise of qualified medical personnel and obtain their assistance in identifying any obstructions or blockages found while examining an x-ray or conducting a probe.

Note: Refer to Part 6, Chapter 12 Transporting Persons Under Arrest or Detention.

96. Section 98 of the *Customs Act* does not authorize an officer to demand that a traveller submit to an x-ray. To expedite the monitored bowel movement process, the CBSA allows travellers who are detained on suspicion of internally carrying illicit drugs to volunteer to be x-rayed by a medical professional. In order to facilitate this process and to document the traveller's consent to this procedure, the traveller is asked to sign form K-155, *X-ray Consent/Waiver*. Having signed this form, it remains that the individual may withdraw his or her consent at any time prior to the x-ray being taken.
97. Despite the fact that the traveller has volunteered to undergo the x-ray and has consented to allow the medical staff to provide the results to the CBSA, the traveller continues to be lawfully detained during this time. In this respect, CBSA officials continue to have all the same powers and authorities to limit the traveller's liberty and to supervise his or her actions as if the traveller was lawfully detained in a cell at a port of entry.

Note: Officers should ensure that they be allowed to monitor the detained person at all times and should ensure that hospital staff do not permit a detained person to have unsupervised access to a hospital washroom (or other area that could result in the loss or destruction of evidence) unless such access is deemed medically required.

98. It is essential to ensure that the traveler is constantly monitored. In so doing, should the hospital refuses to disclose the x-ray results or the individual withdraw his or her consent, the detention (monitored bowel movement) would continue with the detained traveller returning to the port of entry until such time as officers are satisfied that he or she is not carrying illicit drugs internally.

Medical and Ambulance Fees

100. The CBSA will pay the costs associated with the x-ray examination of a person for purposes of determining, if they have ingested contraband.
101. The person or their health or medical insurance will pay costs for all other medical related expenses except in cases where the person has no cash, credit card or health or medical insurance.
102. In-province residents must provide their health card and medical insurance information to the medical facility for billing of other medical related expenses.
103. For out of province or out of country residents, officers will make all reasonable attempts to have the person pay for their medical attention and/or ambulance fees.
104. The CBSA must accept responsibility for payment to the medical facility when the person (out of province or out of country resident), does not supply a health card, medical insurance card, cash or credit card. In such cases, officers will supply the hospital with their manager's name, address, and phone number for billing purposes.
105. A person's money may be used to purchase medication, only if they grant consent.
106. Officers will advise the attending physician when a person has no coverage or money and medication is prescribed.

Note: In these cases, the physician may choose to dispense hospital medications.
107. Officers will place receipts for medication purchased by a person in a personal belongings envelope for return to them.

Note: Refer to Part 6, Chapter 2, Care and Control of Persons in Custody.

ROLES AND RESPONSIBILITIES

Border Services Officers

108. Border services officers are responsible for:

- a) adhering to this policy and procedures;
- b) conducting personal searches, which may include monitored bowel movements, transporting persons to a medical facility, and monitoring cavity searches where and when so directed;
- c) following all necessary health and safety precautions, including ensuring they have the necessary vaccinations; and
- d) assist other officers by clearing search and SIU rooms, preparing evidence bags, protective gloves, and paperwork, and keeping detailed, accurate notes.

Senior officers

109. Senior officers are responsible for:

- a) evaluating the grounds for suspicion for each individual traveller as presented by border services officers and, where warranted, authorizing monitored bowel movements, and transport of persons to a medical facility;
- b) providing guidance and technical assistance to lead and assisting officers;
- c) ensuring search and SIU rooms are available when required;
- d) assisting in the provision of evidence bags, cameras, and protective gloves;
- e) notifying all involved officers when a seizure has commenced;
- f) advising the regional intelligence officer (RIO) and receiving police force when required;
- g) ensuring that the policies and procedures related to personal searches, transporting persons to a medical facility and cavity searches are adhered to by border services officers; and

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- h) taking appropriate corrective action on any breaches of the policy.

Regional Intelligence Officers

110. Regional Intelligence Officers are responsible for:

- a) ensuring that current intelligence related to smuggling of contraband is assessed according to the validity and level of risk associated with the smuggling of controlled substances; and
- b) ensuring that lookouts are issued and files containing information on known or suspected drug smugglers are maintained.

Intelligence Directorate and Criminal Investigations Division

111. The Intelligence Directorate and Criminal Investigations Division are responsible for:

- a) developing, modifying, and approving all policies in accordance with court jurisprudence related to the administration of personal searches, including the collection and analysis of body waste, transporting of persons to a medical facility and cavity searches;
- b) ongoing development and support of monitored bowel movement tools and techniques;
- c) ensuring consistent application of the policy in all regions; and
- d) providing functional guidance and training.

PROCEDURES

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112. Request the aid of an assisting officer.

113. Ensure the person is under constant observation.

114. Notify the responsible senior officer of the reasons for performing a personal search and obtain approval to proceed.

Note 1: It is recommended that senior officers review the grounds written in the officers' notebook and if they approve the search, they will sign, date, time, and record their badge number underneath the officers noted grounds. Senior officers should also record the person's data in their

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notebook, indicate that they authorized the search, and that they agreed with the grounds presented.

Note 2: In cases where more than one traveller is involved, border services officers must notify the senior officer of the reasons for performing a personal search and obtain approval to proceed for each individual traveller.

115. Inform the person that they are being detained for the purposes of a personal search under section 98 of the *Customs Act* (or section 15 of the PCMLTFA) and the reason for the detention. One of the following statements is recommended:

a) For Drugs or other contraband:

"I have reasonable grounds to suspect that you are carrying non-reported goods (or suspected drugs) on or about your person and I am detaining you for the purposes of a personal search as authorized by section 98 of the *Customs Act*."

b) For Currency of Monetary Instruments:

"I have reasonable grounds to suspect that you are carrying non-reported currency or monetary instruments above the prescribed amount on or about your person and I am detaining you for the purposes of a personal search as authorized by section 15 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*."

Note: The Officer's Reference Booklet also contains a version of this statement to ensure it is easily available to on-site officers.

116. Advise the person that they have the right to retain and instruct counsel immediately.

117. Also caution the person to ensure that any statement or admission of guilt made by a person after detention or arrest is admissible evidence in court.

118. Prior to making any telephone calls, but after or while being informed of their right to counsel, frisk the person for officer safety and where available, augment the frisk with the use of a metal detector wand.

119. Allow the person to contact counsel.

Note: If a call takes place in a closed or private room, the door to the room may be closed only if the person can still be observed (i.e., through a window). If a call takes place in an open room, all officers will maintain an appropriate distance so that the conversation is private and cannot be overheard.

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120. At any time when a person has admitted to unlawful conduct and has not been previously cautioned, immediately caution them concerning the making of any further statements.
121. Record in your notebook the person's answers to their rights and cautions, whether they elected to contact counsel, and if counsel was reached. Include the name of counsel and phone number used to contact counsel.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures for detailed guidelines and wording regarding rights and cautions.
122. Direct the assisting officer to clear and make safe the search room.

Note: For example, papers, paperclips, pens, cups, foreign objects that could be used as weapons, and anything that could generally contaminate the evidence.
123. Make a notebook entry of the fact that the search room is clear and if applicable, any findings made while preparing it.
124. Ensure the person reads section 98 of the *Customs Act* (or section 15 of the PCMLTFA) or read section 98 and/or section 15 of the PCMLTFA to the person.
125. Ensure that they understand section 98 (or section 15 of the PCMLTFA). If not, explain section 98 and/or section 15 of the PCMLTFA to them in words they can understand. The officer should take notes of what was explained to the traveller.
126. Upon request, bring the person before a senior officer for a review of the reasonable grounds for the search. The officer reviewing the grounds cannot be the same person who approved the original request to conduct the search.
127. The senior officer must ensure that a secondary caution is provided as follows:

"If you have spoken to any police officer or to anyone, or if any such person has spoken to you in connection with this case, I want it clearly understood that I do not want it to influence you in making any statement."
128. Protective gloves, masks and protective eyewear may be worn, if necessary.
129. Instruct the person to remove all items from his/her pockets.

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130. Document these items in the notebook and later record the information on the personal effects record portion of a Personal Search/Arrest Report form in ICES or, for non-automated ports, complete a paper version of the form. Document the instructions and items removed chronologically.
131. Instruct the person to remove each piece of clothing, one item at a time, and hand it to the searching officer.
132. Examine each item of clothing for any hidden contraband or evidence such as receipts.
133. Closely examine waistbands and seams of garments for evidence or anything that could be used as a weapon such as needles and razor blades.
134. After examination, fold each piece of clothing and place it on a table or chair.
135. Once the person is disrobed, view all exterior parts of the body such as the hair, under-arms, legs, and bottoms of the feet, and ask to look into the person's mouth.
136. If necessary, instruct the person to bend over and/or squat and look for indicators (strings, lubricants, etc.) that suggest the insertion of foreign objects into body cavities. Instruct the person to spread the buttocks if necessary.
137. Determine if suspicion still exists for inserted or ingested contraband.
138. If circumstances warrant, arrest persons when contraband is discovered or when they have admitted to concealing contraband and advise them of the reason for the arrest, their right to retain and instruct counsel, and caution them about making any incriminating statements.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

139. If a person is no longer under detention and is not under arrest, inform them that the search is complete and they are free to leave or where concealed goods have been discovered, that their co-operation in completing enforcement action documentation will facilitate their departure from the CBSA area.
140. Advise persons not under detention or arrest that they may get dressed in private.
141. Continue to observe persons under detention or arrest while they dress.

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142. Escort detained or arrested persons to a detention cell, secure area of the CBSA facility, or SIU room for further processing.

Note: Refer to Part Six, Chapter Two, Care and Control of Persons in Custody.

143. Take detailed notes throughout the process, including all reasonable grounds, a list of all indicators observed (including verbal inculpatory and exculpatory statements and non-verbal responses), time of contact, detention, arrest, contact of counsel, health checks, eating and drinking, etc.
144. Record all findings of a personal search on the Personal Search/Arrest Report form in ICES or for non-automated ports complete a paper version of the form.

Body Packs

145. If body packs are found, and if circumstances warrant, arrest the person, advise the person of the reason for the arrest, advise the person of his rights, and caution the person.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

146. Advise the senior officer on duty of the discovery of body packs.
147. Take pictures of the person dressed and in different stages of undress while the body packs are still in place.

Note: Photographs will serve as evidence in court. Photographs are considered documentary evidence and must be submitted under disclosure.

148. Instruct the person to carefully remove the packs one at a time and hand them to you. This option is only used, if the person is cooperative and poses no threat to themselves or the officers. If hostile, the person will remain handcuffed and the officer will be responsible for removing the packs or the person will be turned over to the responding police agency with the packs.
149. Take over the removal of the packs, if scissors or some other type of cutting instrument is required to remove the packs
150. Mark all evidence properly noting the location on the body from where it was retrieved. Place in evidence bags, seal, and mark. Cross-reference of evidence marking should also be included in the notebook.

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Note: Refer to Part Nine, Chapter Three, Statements and Evidence Policy and Procedures.

151. Seize as evidence any clothing such as body suits, leotards, and girdles that were used to conceal the packs.
152. Take detailed notes throughout the process.
153. Note all findings on the Personal Search/Arrest Report form in ICES or for non-automated ports complete a paper version of the form.

Anal or Vaginal Inserts

154. If anal and/or vaginal inserts are found, the person may be arrested.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

155. Advise the senior officer on duty of the discovery of anal and/or vaginal inserts.
156. Offer to contact medical assistance and proceed to a medical facility if requested by the person.
157. If the person agrees and can remove the insert without complications, provide them with protective gloves.
158. Allow them to remove the insert in a manner that is most comfortable for them.
159. Stand to the side of the person where the concerned area can be viewed.
160. Hold an evidence bag open. Tell the person to remove the insert and to carefully drop it into the bag.
161. If at anytime the person encounters problems, call in medical assistance.
162. Once the insert is placed in an evidence bag, note the location on the body from where it was retrieved, properly seal, and mark the bag.

Note: Refer to Part Nine, Chapter Three, Statements and Evidence Policy and Procedures.

163. Take detailed notes throughout the process.

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164. Record all findings on a Personal Search/Arrest Report form in ICES or for non-automated ports complete a paper version of the form.

Monitored Bowel Movement

Specimen Isolation Unit

165. Articulate the grounds to the senior officer on duty and request approval to move the person into the SIU room and perform a monitored bowel movement. Senior officers must review the grounds written in the officers' notebook and if they approve the search, they sign, date, time, and record their badge number underneath the officers noted grounds. Senior officers should also record the person's identification information in their notebook, indicate that they authorized the search, and that they agreed with the grounds presented.
166. Ask the assisting officer to prepare the SIU room, make it sterile, and clear the SIU.
167. Upon entering the SIU room, detain or arrest the person for the ingestion of drugs.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

168. Inform the person of the reason for the monitored bowel movement. The following statement is recommended:
- “You are being detained (or arrested) on suspicion of having concealed drugs within your body. You have the right to have the validity of this detention reviewed by a court and to be released if the court determines the detention is unlawful. Do you understand? Do you wish to discuss this with a lawyer?”
169. Provide the person with access to a phone if they request to contact counsel.
170. Throughout the proceedings in the SIU room, continue note taking as lead and assisting officers, adding indicators noted during your time in the SIU room to the original list of indicators.
171. Before proceeding further, offer medical assistance and proceed to a medical facility if requested by the person.

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172. Throughout the proceedings in the SIU room, regularly ask the person about their physical condition and look for any possible signs of distress or deterioration.
173. Advise the person of the procedures with respect to the SIU itself. For example, where to sit, where you and the assisting officer will be located, where their bowel movement will go, where it will be cleaned, and where the evidence will be placed.
174. Wear protective gloves throughout the time of contact with the person, as direct contact with bodily secretions is expected and there may also be unexpected contact with other bodily fluids.
175. In cases where exposure to bodily fluids has occurred, discard gloves in a secure, lined trash container (peel them off rolling the glove outside in), wash hands, and clean the affected area with disinfectant.
176. Tell the person to indicate to an officer when they are ready to produce a bowel movement.
177. Tell the person to keep their hands on their knees.
178. Position the assisting officer where they can clearly observe the person's hands at all times.
179. Turn on the SIU and instruct the person to proceed with the bowel movement.
180. When the person has produced a bowel movement, clean away any faecal matter from the suspected drugs.
181. Place the drugs from the first bowel movement in two separate evidence bags as follows:
 - a) Place one single piece of evidence (pellet, condom, or balloon) in an evidence bag and mark it 1A.
 - b) Place the remainder of the first bowel movement in a second evidence bag and mark it 1B.
182. Advise the senior officer on duty of the production of the evidence.
183. Place further bowel movements in separate bags and mark them sequentially, coinciding with each movement (i.e., the second bowel movement will be placed in an evidence bag and marked 2, the third 3, etc.).

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184. As soon as it appears that the detention period will exceed 24 hours, arrange to take the person before a Justice of the Peace for a hearing. The Justice of the Peace may validate a longer detention period. The appearance before a Justice of the Peace must be done before the person has been in custody for 24 hours. When it appears at the beginning of a detention that the person intends to hold out as long as possible rather than admit to ingesting contraband, take them to the Justice of the Peace immediately rather than wait until the time limit approaches.

Note: In most cases, the border service officer will be required to give evidence at the validation of detention. The officer will be required to testify to the indicators that were uncovered during dealings with the person to show reasonable and probable grounds to continue the detention.

185. Contact the police to make the necessary arrangements for transportation to a Justice of the Peace.

186. Provide the relief officer with a copy of the list of indicators before going off-shift.

187. The relief officer will record new indicators in their notebook and on the previous officer's list of indicators.

188. Treat this list as a piece of evidence. It may be entered as evidence and disclosed to the crown and defence in court proceedings.

189. Upon exiting the SIU room, immediately remove any protective clothing such as masks, and gloves and discard in a secure, lined trash container (peel gloves off by rolling outside in), and wash hands.

190. Once a relief officer enters the SIU room, they now become the seizing officer if any evidence is produced.

191. During the person's stay in the SIU room, offer them food and/or drink at the standard times for breakfast, lunch, and dinner.

Note: Acceptable drinks are water, soft drinks, and fruit juices (excluding prune). Any type of food is acceptable.

Note: Take into consideration the persons' cultural and religious beliefs pertaining to food.

192. Advise them that the CBSA will pay for any food/meals within reason.

Note: The cost of food for the person must not exceed the meal allowance for that particular meal.

Note: Officers are not expected to use their own money. They may use money from petty cash. Receipts are required.

193. Ask if the person has any allergies before obtaining food or drinks.
194. Take detailed notes throughout the process, including all reasonable grounds, a list of all indicators observed (including non-verbal and verbal inculpatory and exculpatory statements and responses), time of contact, detention, arrest, contact of counsel, health checks, attempts at bowel movements, actual bowel movements, eating and drinking, what was consumed, etc.
195. Note all findings on a Personal Search/Arrest Report form in ICES or, for non-automated ports, complete a paper version of the form.

Alternatives to Specimen Isolation Unit

196. Where no SIU is available, use an alternative method to collect the bowel movement such as:
 - a) a hospital-type bedpan;
 - b) a portable toilet; or
 - c) a private washroom where the water has been turned off and all water is drained from the toilet tank. Use a garbage bag over the toilet seat to collect the bowel movement.

Note: Follow all other procedures outlined in the *Specimen Isolation Unit* section of this chapter.

REFERENCES

197. *Customs Act*
R. v. Simmons, Supreme Court of Canada Decision
R. v. Monney, Supreme Court of Canada Decision
Youth Criminal Justice Act
Criminal Code of Canada
Occupational Health and Safety Act
Internal Carriers and Body Packers, Contraband Enforcement Training
ICES User Reference Manual
Public Service Employment Regulations
CBSA Finance and Administration Manual
CBSA Motor Vehicle Operation Policy

Part 6

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 6

PERSONAL SEARCH POLICY AND PROCEDURES

Appendix A

AUTHORIZING ASSISTANCE FOR A PERSONAL SEARCH

23/02/12

Appendix A

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) that during a personal search on persons entering Canada suspected of having concealed contraband on or about their person (i.e. body packed), only officers of the same sex as the person may search them.

AUTHORITIES

Customs Act

2. Section 98(1) – Provides that a border services officer may search any person:
 - a) arriving in Canada, within a reasonable time after their arrival,
 - b) about to leave Canada, at any time prior to their departure, or
 - c) who has had access to an area designated for persons leaving Canada and has left the area but has not left Canada, within a reasonable time after they leave the designated area,who the officer suspects on reasonable grounds has goods concealed on or about their person that may contravene the Act, could be evidence of a contravention of the Act, or the importation or exportation of which is prohibited, controlled, or regulated by this or any other Act of Parliament.
3. Section 98(4) – States that no person shall be searched under Section 98 by a person who is not of the same sex, and if there is no officer of the same sex at the place at which the search is to take place, an officer may authorize any suitable person of the same sex to perform the search.
4. Section 99.2 – Authorizes a border services officer to search a person, including prescribed persons or members of a prescribed class of persons, leaving a CBSA controlled area if they have reasonable grounds to suspect the person has goods concealed on or about their person that may contravene the Act, could be evidence of a contravention of the Act, or the importation or exportation of which is prohibited, controlled, or regulated by this or any other Act of Parliament.

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Proceeds of Crime (Money Laundering) and Terrorist Financing Act

5. Section 15 – Authorizes border services officers to search any person:
 - a) arriving in Canada, within a reasonable time after their arrival,
 - b) about to leave Canada, at any time prior to their departure, or
 - c) who has had access to an area designated for persons leaving Canada and has left the area but has not left Canada, within a reasonable time after they leave the designated area,if they have reasonable grounds to suspect that a person has concealed currency or monetary instruments that are greater than the amount prescribed on or about their person and have not reported it.

Criminal Code of Canada

6. Section 2 – Defines border services officers as “peace officers” when performing any duty in the administration of the *Customs Act*.
7. Section 25 – states that as “peace officers” border services officers, with reasonable grounds, are justified in using only as much force as is necessary to complete a search.
8. Section 26 – States that officers who use excessive force are criminally responsible for their actions.

The Canadian Charter of Rights and Freedoms

9. Section 8 – States everyone has the right to be secure against unreasonable search or seizure.
10. Section 9 – States everyone has the right not to be arbitrarily detained or imprisoned.
11. Section 10 – States everyone has the right on arrest or detention:
 - a) to be informed promptly of the reasons for arrest or detention;
 - b) to retain and instruct counsel without delay and to be informed of that right; and
 - c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

PURPOSE AND SCOPE

12. The purpose of this policy is to guide border services officers when another member of the CBSA is not available to assist in a personal search.
13. This policy must be used in conjunction with the following chapters of the Enforcement Manual:
 - a) Part Six, Chapter One, Arrest and Detention;
 - b) Part Six, Chapter Two, Care and Control of Persons in Custody; and
 - c) Part Six, Chapter Six, Personal Search Policy and Procedures.
14. This policy applies to all border services officers.

POLICY GUIDELINES

15. As per Section 98(4) of the *Customs Act*, if there is no border services officer of the same sex at the location at which a personal search is to take place, an officer may authorize any suitable person of the same sex to perform the search.
16. In order of priority by which they are to be contacted, the following is a list of suitable persons to assist a border services officer in a personal search:
 - a) an on duty border services officer from a nearby port of entry;
 - b) an off duty border services officer;
 - c) an employee of the CBSA;
 - d) an employee of the public service;
 - e) a Canadian police officer;
 - f) a Canadian person in a position of authority; or
 - g) a member of the travelling public.

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17. If no suitable person is readily available from Canada, the border services officer may request the assistance of United States authorities (i.e., Department of Homeland Security). The United States officer(s) must not carry a firearm when assisting in a personal search in Canada. In addition it must be explained to the United States officers that the personal search will be conducted under the authority of the *Customs Act*.
18. There is no obligation on the part of any person to assist with a personal search.

ROLES AND RESPONSIBILITIES

Border Services Officers

19. Border Services Officers are responsible for:
 - a) adhering to this policy and procedures;
 - b) conducting personal searches;
 - c) following all necessary health and safety precautions; and
 - d) assisting other officers by clearing search rooms, preparing evidence bags, protective gloves, and paperwork, and keeping detailed, accurate notes.

Senior Officers

20. Senior officers are responsible for:
 - a) evaluating the grounds for suspicion as presented by border services officers;
 - b) providing guidance and technical assistance to lead and assisting officers;
 - c) ensuring search rooms are available when required;
 - d) assisting in the provision of evidence bags, cameras, and protective gloves;
 - e) notifying all involved officers when a seizure has commenced;

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- f) advising the Regional Intelligence Officer (RIO) and receiving police force when required;
- g) ensuring that the policies and procedures related to personal searches are adhered to; and
- h) taking appropriate corrective action on any breaches of the policy.

PROCEDURES

Search by a Border Services Officer and a Non-employee of the CBSA

- 21. When a border services officer and a non-employee of the CBSA jointly conduct a personal search, the border services officer will be responsible for:
 - a) notating the name of the person that will be assisting in the personal search;
 - b) clearly explaining to the individual to be searched that one of the persons conducting the search is not a CBSA officer;
 - c) clearly explaining to the non-employee assisting in the search that their role is to observe the examination;
 - d) being the lead in conducting the examination; and
 - e) following all other procedures for personal searches as per Part Six, Chapter Six of the Enforcement Manual.

Search by Two Non-employees of the CBSA

- 27. When two non-employees of the CBSA jointly conduct a personal search, one of these persons must be a law-enforcement officer.
- 28. The requesting border services officer must:
 - a) notate all efforts made to contact a person to assist in the personal search;
 - b) notate the names of the persons that will be conducting the personal search;

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- c) clearly explain to the individual to be searched that the persons conducting the search are not CBSA officers;
- d) inform the searching persons of what you are anticipating to find in the personal search;
- e) inform the searching persons that at no time are they to touch the individual being searched;
- f) inform the searching persons that when they are satisfied that the examination will be non-resultant that the search may end;
- g) inform the searching persons that the individual to be searched has been cautioned and is not obliged to say anything;
- h) inform the searching persons that if they discover any contraband of evidence of an offence that they are to take possession of it and at the end of the search immediately hand it to the requesting border services officer;
- i) caution the individual and advise them of their rights under section 98 of the *Customs Act* and of their right to counsel;
- j) close the search room door and wait outside of the examination room;
- k) notate the start and end times of the search; and
- l) following the end of the search, the requesting officer will immediately take control of the individual being searched.

REFERENCES

Customs Act
Proceeds of Crime (Money Laundering) and Terrorist Financing Act
Criminal Code of Canada
The Canadian Charter of Rights and Freedoms
The Supreme Court of Canada

CBSA ENFORCEMENT MANUAL

Part 6

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 7

***CRIMINAL CODE* OFFENCES POLICY AND PROCEDURES**

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to sanction designated officers to enforce the *Criminal Code* and other federal statutes in accordance with the *Customs Act* and other pertinent Acts of Parliament.

DEFINITIONS

2. See Part 11 - Glossary.

AUTHORITIES

Customs Act

3. Subsection 163.4 (1) – The Minister may designate any officer for the purposes of Part VI.1 of the Act and shall furnish the officer with a certificate of designation.
4. Subsection 163.5 (1) – A designated officer, when at a CBSA office and performing normal duties of an officer or is acting in accordance with section 99.1 has, in relation to a criminal offence under any other Act of Parliament, has the powers and obligations of a peace officer under sections 495 to 497 of the *Criminal Code*, and subsections 495(3) and 497(3) of that Act apply to the designated officer as if they were a peace officer.
5. Subsection 163.5 (2) – A designated officer when at a CBSA office and performing normal duties of an officer or is acting in accordance with section 99.1, has the powers and obligations of a peace officer under sections 254 and 256 of the *Criminal Code* and may, on demanding samples of a person's blood or breath under subsection 254(3) of that Act, require that the person accompany them for the purpose of taking samples.
6. Subsection 163.5 (3) – A designated officer who arrests a person in the exercise of the powers conferred under subsection (1) may detain the person until the person can be placed in the custody of police.
7. Subsection 163.5 (4) – A designated officer may not use any power conferred on them for the enforcement of the *Customs Act* for the sole purpose of looking for evidence of a criminal offence under any other Act of Parliament.

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Criminal Code Offences

Criminal Code of Canada

8. Section 253 – Every one commits an offence who operates a motor vehicle or vessel or operates or assists in the operations of an aircraft or railway equipment or has care or control of a motor vehicle, vessel, aircraft or railway equipment, whether it is in motion or not,
 - a) while the person's ability to operate the vehicle, vessel, aircraft or railway equipment is impaired by alcohol or a drug; or
 - b) having consumed alcohol in such a quantity that the concentration in the person's blood exceeds eighty milligrams of alcohol in one hundred millilitres of blood.
9. Subsection 254(2) – Authorizes designated officers to demand a breath sample be taken with an approved screening device if reasonable suspicion exists that a person is operating or has care and control over a conveyance while under the influence of alcohol.
10. Subsection 254(5) – Every one commits an offence that, without reasonable excuse, fails or refuses to comply with a demand made to him by a peace officer under this section.
11. Subsection 495(1) – A designated officer may arrest without warrant:
 - a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence;
 - b) a person whom he finds committing a criminal offence; or
 - c) a person in respect of whom he has reasonable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.
12. Subsection 495(2) – A designated officer may not arrest a person without a warrant for:
 - a) an indictable offence mentioned in section 553;

Note: See Appendix A for a list of section 553 offences.
 - b) an offence for which the person may be prosecuted by indictment or for which he is punishable on summary conviction; or

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- c) an offence punishable on summary conviction in any cases where
 - d) he believes on reasonable grounds that the public interest, having regard to all circumstances including the need to:
 - (i) establish the identity of the person,
 - (ii) secure or preserve evidence of or relating to the offence, or
 - (iii) prevent the continuation or repetition of the offence or the commission of another offence
 may be satisfied without so arresting the person, and
 - e) he has no reasonable grounds to believe that, if he does not so arrest the person, the person will fail to attend court in order to be dealt with according to law.
13. Section 496 – Authorizes designated officers to issue an appearance notice to a person, by virtue of subsection 495(2), who is not placed under arrest when the offence is:
- a) an indictable offence mentioned in section 553;
- Note: See Appendix A for a list of section 553 offences.
- b) an offence for which the person may be prosecuted by indictment or for which he is punishable on summary conviction; or
 - c) an offence punishable on summary conviction.
14. Subsection 497(1) – If a peace officer arrests a person without a warrant for an offence described in paragraph 496(a), (b) or (c), they will, as soon as practicable:
- a) release the person from custody with the intention of compelling their appearance by way of summons; or
 - b) issue an appearance notice to the person and then release them.
- Note: It is CBSA policy to issue Appearance Notices only. If a summons is required the responding police agency of jurisdiction will be responsible to issue it.

PURPOSE AND SCOPE

15. The purpose of this policy is to provide guidelines to designated officers for enforcing the *Criminal Code* and other federal statutes.
16. This policy also provides guidelines to non-designated officers for assisting designated officers enforcing the *Criminal Code* and other federal statutes.
17. This chapter is an extension of the Arrest and Detention Policy and Procedures and the Care and Control of Persons in Custody Policy and Procedures and must be used in conjunction with them.

BACKGROUND

18. In May 1998, Bill C-18, An Act to amend the *Customs Act* and the *Criminal Code*, received Royal Assent, and was proclaimed into force on May 1, 2000. The legislation bridged an enforcement gap that previously limited the ability of border services officers to take action when a *Criminal Code* offence was encountered during the course of normal duties.
19. Bill C-18 gives authorization to designated officers at a CBSA office performing normal duties, to arrest without warrant, subject to section 495(2) of the *Criminal Code*, persons whom they believe on reasonable grounds have committed or are in the process of committing a *Criminal Code* or other federal offence. Designated officers are authorized to take enforcement action against all federal offences including impaired driving, kidnapping, stolen property, and outstanding warrants.
20. All border services officers (BSO's) have a first response mandate to identify *Criminal Code* offences. Designated officers have the authority to deal with subjects involved with a *Criminal Code* violation, process them as per standard operating procedures, and refer them to a police agency of jurisdiction. It is important to note, however, border services officers cannot use their authorities under the *Customs Act* for the sole purpose of searching for *Criminal Code* offences. Rather, during the normal course of their duties, officers who encounter *Criminal Code* offences now have the authority to act.

POLICY GUIDELINES

21. The primary responsibility of all border services officers will be the administration and enforcement of the *Customs Act* and its regulations and other government regulations for which they have responsibility.

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22. All officers will be considered for designation, with the exception of Student border services officers.
23. In order to become designated, officers must successfully complete CBSA approved training.
24. Designated officers must undergo CBSA sanctioned skills maintenance training in order to remain designated.

Note: Refer to Part 6, Chapter 5, Use of Force Policy and Procedures.

25. The CBSA designation card (RC121B) issued to designated officers will be recognized as the “certificate of designation” as required by the *Customs Act*.
26. Officers will enforce the provisions of the *Criminal Code* only when they:
 - a) are performing their normal duties at Officer Powers implemented offices;
 - b) have been designated by their Regional Director General;
 - c) have access to back up assistance; and
 - d) are mindful and confident of their abilities to take action that will result in a successful conclusion.
27. Only designated officers will exercise the authorities laid out in subsections 163.5(1) through (4) of the *Customs Act*.
28. Designated officers will not use their *Customs Act* authorities for the sole purpose of looking for evidence of a *Criminal Code* offence under the *Criminal Code* or any other federal statute as per section 163.5(4) of the *Customs Act*.
29. Designated officers will enforce the provisions of the *Criminal Code* or other federal statutes and will refer offenders to the police agency of jurisdiction for further processing and the laying of charges should it be warranted.
30. Officers are responsible for complying with court processing requirements as specified by local Crown Counsel or the local police agency of jurisdiction.
31. For safety and security concerns, officers will run Canadian Police Information Centre (CPIC) checks on all detained or arrested persons and their vehicles.

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Criminal Code Offences

32. Designated officers will place persons who are lawfully arrested or detained for a criminal offence in a detention facility or hold them in a secure area of the CBSA facility, preferably out of public view. All persons will be observed and monitored carefully until the police agency of jurisdiction assumes custody.

Note: Refer to Part 6, Chapter 2, Care and Control of Persons in Custody Policy and Procedures.

Note: In situations where the Vehicular Transport of Persons Under Arrest or Detention policy is applied, the subject may be transported to the responding police agency location or an alternate CBSA facility. Refer to the Vehicular Transport of Persons Under Arrest or Detention policy in the EN manual Part 6 Chapter 8 for further information.

33. Designated officers, when arresting young persons, will comply with the arrest policy and procedures for young offenders including use of the specific Notice Upon Arrest and Right to Counsel for Young Offenders that is used by the local police agency of jurisdiction.
34. Designated officers will notify Citizenship and Immigration Canada (CIC) as soon as possible after the arrest of a foreign national. Further, foreign nationals will be advised and allowed to contact the embassy or consulate of their home country in addition to contacting counsel.

Note: Foreign nationals include visitors holding citizenship in another country, including U.S. visitors and U.S. resident aliens, and persons temporarily residing in Canada (e.g. work or student visas, Minister's Permit, etc.)

35. If a border services officer is conducting a customs secondary examination for contraband or if during the course of a customs secondary examination it is determined a person is in violation of any Federal offence, officers will continue customs processing and will notify CIC at the earliest opportunity.
36. If foreign representatives (i.e. diplomats, consular personnel, international organization personnel, and United Nations personnel) are suspected of being involved in any *Criminal Code* offence, officers will follow the policy and procedures for dealing with offences by foreign representatives.
37. Designated officers will apply the law in accordance with on-going jurisprudence and according to the direction of the local Crown Counsel.
38. Designated officers will adopt specific procedures for *Criminal Code* and other federal statute enforcement to be consistent with the enforcement

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practices of the police agency of jurisdiction, as set out in the police agency of jurisdiction agreements/Memorandum of Understanding (MOU).

39. If a non-designated officer encounters a criminal offence, other than an offence identified under the Customs Act or the IRPA, they will seek the immediate assistance of a designated officer. If a designated officer is not available, the non-designated officer will release the person on completion of customs and immigration processes, and immediately alert the RPA of jurisdiction.

40. Designated officers will endeavor to conclude customs processes before commencing any *Criminal Code* enforcement activities.

Note: The necessity, however, to have a person suspected of alcohol related driving offences provide then or as soon as possible samples of their breath requires that breath testing takes priority.

41. Designated officers will enforce impaired driving offences in accordance with Section 253 and 254 of the *Criminal Code*, following procedures set out in the local police agreement/MOU.

42. Designated officers will only specifically ask a person if they have been drinking if indicators exist that this is the case. Under all other circumstances, this question falls within provincial authorities and is contrary to section 163.5(4) of the *Customs Act*.

43. In line with the first response mandate officers will not administer the Approved Breath Analysis Instrument (ABAI) test. Officers will turn the person over to the responding police agency for further processing in accordance with this policy.

44. Designated officers will not suspend the driver's license of persons for any reason including persons who fail or refuse to comply with the demand to provide a breath sample, who blow a "WARN" on the Approved Screening Device (ASD), or who are novice drivers with a positive alcohol concentration, as this authority falls under provincial legislation.

45. Designated officers will only take enforcement action on outstanding Federal warrants issued by Canadian courts.

Note: A non-resident subject to a foreign warrant will be referred to Citizenship and Immigration Canada (CIC).

46. In all cases where the subject of an outstanding warrant is encountered, the designated officer will contact the originating agency following the procedures set out in the police agency of jurisdiction agreement/MOU and the procedures contained herein.

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47. Designated officers will enforce the provisions of the *Criminal Code* dealing with possession of goods obtained by crime.
48. Designated officers may arrest persons they believe have kidnapped/abducted another person in accordance with section 495 of the *Criminal Code*.
49. Designated and non-designated officers will follow specific policy and procedures relating to abducted children.
50. When a designated officer is the arresting officer, they may complete an Appearance Notice (Form 9) to compel the attendance in court of a person who has not yet been charged with an offence and release them when:
 - a) release is authorized under the *Criminal Code*;
 - b) public interest and court appearance are satisfied; and
 - c) the police agency of jurisdiction **will** lay or initiate *Criminal Code* charges but do not respond to the location for the offence.

Note: This will primarily be for cases involving persons who refuse to comply with a designated officer's demand to provide samples of breath into an ASD.

Note: Refer to Appendix B for a sample Appearance Notice (Form 9).
51. If the arresting officer is not available, an Appearance Notice will not be used to release a person. The person must either be:
 - a) held in custody pending the arrival of the police agency of jurisdiction and released by an officer in charge from that agency, in accordance with section 498 of the *Criminal Code*; or
 - b) if the police agency of jurisdiction cannot attend, released and informed that they will be served with a summons to compel their appearance in court issued by the police agency of jurisdiction.
52. Arresting designated officers will complete a Personal Search and Arrest Report (BSF667) in the Integrated Customs Enforcement System (ICES) and a *Criminal Code* Incident Report (E641) for all *Criminal Code* offence arrests. At locations that do not have access to ICES, a copy of the documents must be completed manually.

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Note: Refer to the ICES User Reference Manual, Chapter 20 for instructions on the completion of the Personal Search and Arrest Report (BSF667) window.

Note: Refer to Appendix C for a sample of the *Criminal Code* Incident Report (E641).

53. All officers involved in *Criminal Code* enforcement occurrences will accurately record the details in their notebook.
54. All officers involved in *Criminal Code* enforcement occurrences will be responsible for complying with court processing requirements as specified by Crown Counsel and/or the police agency of jurisdiction.
55. Designated officers who for medical reasons or any other reason approved by local management, are temporarily incapacitated, will retain their designated status as long as the period of incapacitation does not exceed the established time frame for skills maintenance training.
56. Situations involving the temporary reassignment of designated officers to areas not requiring designation will be reviewed on a case-by-case basis. Local managers will make decisions regarding designation status based on operational considerations, as long as the period of temporary reassignment does not exceed the established time frame for skills maintenance training.
57. Designated officers who are reassigned from implemented sites to non-implemented sites on a permanent basis or who accept permanent assignments within other areas of the CBSA where designation is not a job requirement are required to return their certificate of designation to local management.

ROLES AND RESPONSIBILITIES

Non-Designated Officers

58. Non-Designated officers are responsible for:
 - a) adhering to this policy and procedures;
 - b) seeking the immediate assistance of a designated officer when a *Criminal Code* offence is encountered or alerting the police agency of jurisdiction if a designated officer is not available, unless the arrest policy provides for the authority to act under the *Customs Act*;

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Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures.

- c) providing assistance, commensurate with the officer's training and abilities, to designated officers as required; and
- d) abiding by the conditions and procedures set out in the local agreement or Memorandum of Understanding (MOU) negotiated with the police agency of jurisdiction.

Designated Officers

59. Designated officers are responsible for:

- a) enforcing provisions of the *Criminal Code* in accordance with the law;
- b) abiding by the conditions and procedures set out in the local agreement or Memorandums of Understanding (MOU) negotiated with the police agency of jurisdiction; and
- c) reporting *Criminal Code* occurrences using established Agency processes.

Regional Managers and Superintendents

60. Regional Managers and Superintendents are responsible for:

- a) ensuring compliance with this policy and procedures;
- b) ensuring officers receive the necessary training, including skills maintenance training, to allow for the retention of designated status;
- c) maintaining accurate records for training and skills maintenance training purposes;
- d) ensuring adequate designated officer coverage per shift and location;
- e) ensuring an authorized and functioning Approved Screening Device (ASD) is readily available at all times so that tests can be conducted immediately, where applicable;
- f) monitoring, identifying, and addressing deficiencies in *Criminal Code* offence enforcement activities;
- g) ensuring adherence to statistical and occurrence reporting processes;

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- h) abiding by the conditions set out in agreements or Memorandum of Understanding (MOU) negotiated with the police agency of jurisdiction on matters related to *Criminal Code* enforcement;
- i) performing the duties of the Court Liaison Officer where they are unavailable or the position does not exist;
- j) performing the duties of the Officer Powers Regional Coordinator when they are unavailable or the position does not exist; and
- k) taking appropriate corrective action on any breaches of this policy.

Court Liaison Officer

61. The Court Liaison Officer is responsible for:

- a) coordinating the transfer of documents relevant to offences and court appearances to the police agency of jurisdiction;
- b) scheduling officer's court time; and
- c) notifying the Enforcement Programs Directorate of any court disposition that may have an impact on their programs (i.e. Officer Powers).

Regional Officer Powers Coordinators

62. The Regional Officer Powers Coordinators are responsible for:

- a) supporting the Headquarters project team in the implementation process within the region;
- b) ensuring that a consistent program is maintained in accordance with established policies and procedures;
- c) providing guidance and support to field offices within their region;
- d) liaising with other government departments and agencies at the regional level;
- e) ensuring Headquarters is provided with current, accurate, and up to date statistics and information respecting the functioning of the project within the region; and
- f) apprising Headquarters of any unusual or extraordinary Officer Powers occurrences, or any activities that may be contrary to Officer Powers' policy, standard operating procedures, or processes.

Enforcement Programs Directorate

63. The borders Enforcement Directorate is responsible for:

- a) monitoring program activities and *Criminal Code* occurrence reports;
- b) developing and modifying policies and procedures as required;
- c) developing, modifying, and delivering training as required;
- d) providing guidance and support to the field;
- e) ensuring that a consistent CBSA communications strategy is maintained;
and
- f) negotiating and liaising with other government departments and agencies at the Headquarters level.

PROCEDURES

Note: These procedures are intended to reflect the national scope of the CBSA. Variances to these procedures may be necessary to meet requirements in local police agreements/Memorandum of Understanding (MOU).

Impaired Drivers

Non-Designated Officers

64. When a non-designated officer has reasonable and probable grounds to believe a person is operating a motor vehicle or vessel, operating or assisting in the operation of an aircraft or railway equipment, or a person has care or control of a motor vehicle, vessel, aircraft, or railway equipment, whether it is in motion or not, is impaired by alcohol or a drug:
- a) Suspend primary questioning as soon as an offence is detected. Advise supervisor/office that a designated officer is required.
 - b) Once a designated officer has been requested, resume and complete customs primary questioning. Turn over control of the interview to the designated officer as soon as possible. Under no circumstances is the driver to be permitted to operate the conveyance beyond this point.
 - c) Make detailed notes about the occurrence.

- d) If no designated officer is available, the non-designated officer will:
 - i) complete any required customs processing;
 - ii) release the person and, to prevent the continuation of the offence, request the driver voluntarily park their vehicle and seek alternate transportation; and
 - iii) if the driver fails to park the vehicle, immediately report the details of the incident to the responding police agency of jurisdiction.

Designated Officers

65. When a designated officer has reasonable and probable grounds to believe a person is operating a motor vehicle or vessel or operating or assisting in the operation of an aircraft or railway equipment, or has care and control of a motor vehicle, vessel, aircraft, or railway equipment, whether it is in motion or not, is committing or has committed within the preceding three hours an offence under section 253:

- a) If at primary, request a replacement PIL officer through the superintendent/office, where applicable.
- b) Request identification from the driver.
- c) To prevent the continuation of the offence, request that the driver get out of the vehicle. Ensure the vehicle is turned off. Under no circumstances is the driver to be permitted to operate the conveyance beyond this point. Should a driver refuse to exit their vehicle, handle them in accordance with use of force training, policy, and procedures.

Note: Refer to Part 6 Chapter 5, Use of Force Policy and Procedures.

- d) Request assistance from another officer to remove or have the vehicle removed from the primary lane.
- e) Separate the driver from any other vehicle passengers and retain the driver's ownership, registration, and car keys.

Note: There will be variances in procedures from region to region, and even from CBSA office to CBSA office as may be indicated in the local police agreement/MOU.

Note: A Secondary Referral (E67) or Report to Warehouse (Y28) should be completed indicating the person's customs declaration.

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Note: The order of the following (f, g, and h) is dependent on the local police agreement/MOU. If it is necessary to arrest an individual for impaired driving the arrest will come first, followed by rights and cautions, then the ABAI demand. If no arrest is necessary the ABAI demand will be read followed by the rights and cautions.

Note: Officers must be able to articulate why they arrested an individual, subject to 495(2) of the *Criminal Code*.

- f) To prevent the continuation of the offence and/or secure evidence, arrest, handcuff, and frisk the person in accordance with CBSA policies and procedures.

Note: It is strongly recommended that frisks be conducted by officers of the same sex as the person to be frisked. It is recognized that in certain situations and at smaller ports this will not always be possible.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures for guidelines on conducting frisks and applying handcuffs.

- g) Caution the person and read them their right to counsel.
- h) Read the ABAI demand as specified by the police agency of jurisdiction.
- i) Once the person has been provided with the opportunity to exercise their right to consult counsel, or declined this right, place them in custody pending the arrival of the police agency of jurisdiction.

Note: Although the person may decline to consult counsel at this point in the process, they may exercise this right at any time.

Note: Refer to Part 6, Chapter 2, Care and Control of Persons in Custody Policy and Procedures.

- j) Contact the police agency of jurisdiction to request attendance at the CBSA office.
- k) Record the time the police agency was contacted in your notebook.
- l) Complete a CPIC check on both the subject and vehicle.
- m) Complete the Personal Search and Arrest Report (BSF667) window in ICES. For non-automated ports, a copy of the BSF667 must be completed manually.

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Note: Refer to the ICES User Reference Manual, Chapter 20 for instructions on the completion of the Personal Search and Arrest Report (BSF667) window.

- n) Record the police contact's name, badge number, and response information on the BSF667.
- o) Provide the attending police officer with a copy of the BSF667 and have them sign both copies.
- p) Complete the *Criminal Code* Incident Report (E641).

Note: Refer to Appendix C for a sample of the *Criminal Code* Incident Report (E641).

- q) Complete all applicable court processing documentation as stipulated in the local agreement/MOU.

Processing Drivers Suspected of Having Consumed Alcohol

Non-Designated Officers

66. When a non-designated officer reasonably suspects that a person has alcohol in their body and is operating a motor vehicle or vessel, operating or assisting in the operation of an aircraft or railway equipment, or has care and control over a motor vehicle, vessel, aircraft, or railway equipment, whether it is in motion or not, but reasonable and probable grounds do not exist to indicate that an offence under section 253 has been committed:
 - a) Suspend primary questioning as soon as an offence is detected. Advise the supervisor/office that a designated officer is required.
 - b) Once a designated officer has been requested, resume customs primary questions. Turn over control of the interview to the designated officer as soon as possible.
 - c) Make detailed notes about the occurrence.
 - d) If no designated officer is available, the non-designated officer will:
 - i) complete any required customs processing;
 - ii) release the person and, to prevent the continuation of the offence, request the driver voluntarily park the vehicle and seek alternate transportation; and

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- iii) if the driver fails to park the vehicle, immediately report the details of the incident to the responding police agency of jurisdiction.

Designated Officers

67. When a designated officer reasonably suspects that a person has alcohol in their body and is operating a motor vehicle or vessel, operating or assisting in the operation of an aircraft or railway equipment, or has care and control of a motor vehicle, vessel, aircraft, or railway equipment whether it is in motion or not, but reasonable and probable grounds do not exist to indicate that an offence under section 253 has been committed:

- a) If at primary request a replacement PIL officer through the superintendent/office, where applicable;
- b) Request identification from the driver;
- c) Request that the person get out of the vehicle to prevent the continuation of the offence. Ensure that the vehicle is turned off. Under no circumstances is the driver to be permitted to operate the conveyance beyond this point. Should a driver refuse to exit their vehicle, handle them in accordance with use of force training, policy, and procedures.

Note: Refer to Part 6, Chapter 5, Use of Force Policy and Procedures.

Note: A Secondary Referral (E67) or Report to Warehouse (Y28) should be completed indicating the persons customs declaration.

- d) Read the ASD demand approved by the police agency of jurisdiction.
- e) Request assistance from another officer to remove or have the vehicle removed from the primary lane. Retain the drivers' ownership, registration, and car keys.
- f) Ensure that the demand is understood.

Note: There may be variances in procedures from region to region, and even from CBSA office to CBSA office as may be indicated in the police agreement/MOU.

- g) If the driver refuses or fails to comply with the demand to provide breath samples refer to 'Processing Drivers who Refuse or Fail to Comply with Breath Demands' which follows.
- h) If there is evidence to suggest that a person has traces of alcohol in their mouth as a result of the recent consumption of alcoholic beverages,

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mouth washes, or breath sprays, or the person is smoking, delay the test for the period of time approved by the police agency of jurisdiction.

- i) Administer the ASD test.
- j) If the ASD registers a **"PASS"**, and all customs processes have been concluded allow the driver to proceed.
- k) If the ASD registers a **"WARN"**:
 - i) Request the driver voluntarily park the vehicle and seek alternate transportation.
 - ii) Allow the driver to proceed.
 - iii) Make detailed notes on the ASD reading of the person and complete an incident report on whether or not they elected to seek alternate transportation.
- l) If the ASD registers a **"FAIL"**.

Note: There will be variances in procedures from region to region, and even from CBSA office to CBSA office as may be indicated in the police agreement/MOU.

Note: The order of the following (i, ii, iii) is dependent on the local police agreement/MOU. If it is necessary to arrest an individual for failing the ASD, the arrest will come first, followed by rights and cautions, then the ABAI demand. If arrest is not necessary, the ABAI demand will be read followed by the rights and cautions.

Note: Officers must be able to articulate why they arrested the individual subject to 495(2) of the *Criminal Code*.

- i) To prevent the continuation of an offence and/or secure evidence, arrest (if public interest is not met), handcuff; and frisk the person in accordance with CBSA policy and procedures.

Note: It is strongly recommended that officers of the same sex as the person to be frisked conduct frisks. It is recognized that in certain situations and at smaller ports this will not always be possible.

Note: Refer to part 6, chapter 1, Arrest and Detention Policy and Procedures for guidelines on conducting frisks and applying handcuffs.

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- ii) Caution the person and read them their right to counsel.
- iii) Read the ABAI demand approved by the police agency of jurisdiction.
- iv) Once the person has been provided with the opportunity to exercise their right to consult counsel, or declined this right, place the person in custody pending the arrival of the police agency of jurisdiction.

Note: Although the person may decline to consult counsel at this point in the process, they may exercise this right at any time.

Note: Refer to Part 6, Chapter 2, Care and Control of Persons in Custody Policy and Procedures.

- v) Contact the local police agency of jurisdiction to request attendance at the CBSA office.
- vi) Record in your notebook the time that the police were contacted.
- vii) Complete the Personal Search and Arrest Report (BSF667) window in ICES. For non-automated CBSA offices a copy of the BSF667 must be completed manually.

Note: Refer to the ICES User Reference Manual, Chapter 20 for instructions on the completion of the Personal Search and Arrest Report (BSF667) window.

- viii) Record the police contact's name, badge number, and response information on the BSF667.
 - ix) Provide the attending police officer with a copy of the BSF667 and have them sign both copies.
 - x) Complete the *Criminal Code* Incident Report (E641).
- Note: Refer to Appendix C for a sample of the *Criminal Code* Incident Report (E641).
- xi) Complete all other court processing documentation specified in the local agreement/MOU.

Processing Drivers who Refuse or Fail to Comply with Breath Demand

Designated Officers

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68. When a designated officer is faced with a driver who refuses or fails to comply with a demand to provide breath samples:

Note: There will be variances in procedures from region to region, and even from CBSA office to CBSA office as may be indicated in the local police agreement/MOU.

Note: In some regions the subject must refuse to a functioning ASD or ABAl instrument in order to gain any conviction in court. Other regions may not have this as a requirement for court purposes.

- a) Advise the driver that if they fail or refuse to provide a sample that they may be charged with a refusal under section 254(5) of the *Criminal Code*.
- b) Read the demand one more time and make note of the driver's words and actions if they continue to refuse or fail to comply.

Note: Officers should indicate to the individual when their "last chance" to provide a sample will be.

- c) Determine if public interest and court appearance would be satisfied if the person were released.
- d) If so, upon consultation with the responding police agency, issue the person with an Appearance Notice and conclude all customs formalities prior to releasing the person.

Note: Refer to Appendix B for a sample Appearance Notice (Form 9).

- e) If public interest and court appearance would not be satisfied if the person were released, arrest the person for refusal or failure to provide a sample, and read them their right to counsel and caution.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures.

- f) Once the person has been provided with the opportunity to exercise their right to counsel, or declined this right, place them in custody pending the arrival of the police agency of jurisdiction or until court appearance and public interest is satisfied.

Note: Although the person may decline to consult counsel at this point in the process, they may exercise this right at any time.

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Note: Refer to Part 6, chapter 2, Care and Control of Persons in Custody Policy and Procedures.

- g) Complete the Personal Search and Arrest Report (BSF667) window in ICES. For non-automated CBSA offices a copy of the BSF667 must be completed manually.

Note: Refer to the ICES User Reference Manual, Chapter 20 for instructions on the completion of the Personal Search and Arrest Report (BSF667) window.

- h) Complete the *Criminal Code* Incident Report (E641).

Note: Refer to Appendix C for a sample of the *Criminal Code* Incident Report (E641).

- i) Contact the police agency of jurisdiction to initiate criminal charges and the prosecution process.
- j) Record the police contact's name, badge number, and response information on the BSF667.
- k) Provide the attending police officer with a copy of the BSF667 and have them sign both copies.
- l) Conclude all customs formalities prior to transferring custody to the police authorities.

Processing Persons Subject to Outstanding Canadian Warrants

Non-Designated Officers

- 69. When a non-designated officer encounters a person that they suspect of being the subject of an outstanding Canadian warrant:
 - a) Suspend customs processing as soon as there are reasonable grounds to suspect that the person is the subject of an outstanding warrant and take immediate measures to obtain the assistance of a designated officer.
 - b) Once a designated officer has been requested resume and complete customs processing. Turn over control of the warrant processing to the designated officer as soon as possible.

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- c) Make detailed notes on observations and indicators used to formulate reasonable grounds to justify suspicions that the person was the subject of an outstanding warrant.
- d) If no designated officer is available, release the person immediately on completion of customs processes and report the details of the incident to the police agency of jurisdiction.

Designated Officers

70. When a designated officer encounters a person that they suspect of being the subject of an outstanding Canadian warrant:

- a) Verify your suspicions via CPIC in accordance with local guidelines. Ensure the warrant has been issued under Federal jurisdiction.
- b) Detain the person, read them their right to counsel, and caution them regarding the making of any statements.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures.

- c) Determine if the originating agency wants the person returned (via CPIC messaging system and the telephone).
- d) If the originating agency does not want the person returned to their jurisdiction and if all customs processing requirements are complete, the person is free to leave.
- e) If the originating agency wishes the person returned, place them under arrest; read them their right to counsel, and caution them regarding the making of any statements.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures.

- f) Handcuff and frisk the person in accordance with CBSA policy and procedures.

Note: It is strongly recommended that frisks be conducted by officers of the same sex as the person to be frisked. It is recognized that in certain situations and at smaller ports this will not always be possible.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures for guidelines on conducting frisks and applying handcuffs.

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- g) Once the person has been provided with the opportunity to exercise their right to consult counsel, or declined this right, place them in custody.

Note: Although the person may decline to consult counsel at this point in the process, they may exercise this right at any time.

Note: Refer to Part 6, Chapter 2, Care and Control of Persons in Custody Policy and Procedures.

- h) Complete the Personal Search and Arrest Report (BSF667) window in ICES. For non-automated CBSA office a copy of the BSF667 must be completed manually.

Note: Refer to the ICES User Reference Manual, Chapter 20 for instructions on the completion of the Personal Search and Arrest Report (BSF667) window.

- i) Record the police contact's name, badge number, and response information on the BSF667.
- j) Provide the attending police officer with one copy of the BSF667 and have them sign both copies.
- k) Complete the *Criminal Code* Incident Report (E641).

Note: Refer to Appendix C for a sample of the *Criminal Code* Incident Report (E641).

- l) Make detailed notes about the occurrence.
- m) Conclude all customs formalities prior to releasing the person, evidence, or conveyance to the police authorities.

Processing Persons Suspected of being in Possession of Property Obtained by Crime

Non-Designated Officers

- 71. When a non-designated officer encounters a person they suspect of being in possession of property obtained by crime:

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- a) Suspend customs processing. Take immediate measures to obtain the assistance of a designated officer. Once a designated officer has been requested resume customs processing.
- b) Turn over control of *Criminal Code* processing to the designated officer.
- c) Make detailed notes of the occurrence.
- d) If no designated officer is available, upon completion of all customs processing, release the person and immediately report the details of the incident to the police agency of jurisdiction.

Designated Officers

72. When a designated officer encounters a person that they suspect of being in possession of property obtained by crime and it is subject to seizure under the *Customs Act*:

- a) Determine who is in possession of the goods (as defined in section 4(3) of the *Criminal Code*).
- b) If no limitations to arrest exist, (e.g. section 357 offence or the value of the suspected stolen property exceeds \$5000), arrest the person using the following terms:
 - i) "I am arresting you as I believe on reasonable grounds that you are in possession of property knowing that the property was obtained by the commission of an offence."

OR

- ii) "I am arresting you as I believe on reasonable grounds that you are in possession of property obtained by the commission of an offence."
- c) If limitations exist, determine if public interest and court presence are satisfied.
- d) If public interest and court are not satisfied (e.g. evidence), place the person under arrest.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures.

- e) Handcuff and frisk the person in accordance with CBSA policy and procedures.

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- f) Advise the person of their right to counsel and caution them regarding the making of statements.

Note: It is strongly recommended that officers of the same sex as the person to be frisked conduct frisks. It is recognized that in certain situations and at smaller ports this will not always be possible.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures for guidelines on conducting frisks and applying handcuffs.

- g) Once the person has been provided with the opportunity to exercise their right to consult counsel, or declined this right, place them in custody pending the arrival of the police.

Note: Although the person may decline to consult counsel at this point in the process, they may exercise this right at any time.

Note: Refer to Part 6, Chapter 2, Care and Control of Persons in Custody Policy and Procedures.

- h) Contact the police agency of jurisdiction and request attendance at the CBSA office.
- i) Complete the Personal Search and Arrest Report (BSF667) window in ICES. For non-automated ports, a copy of the BSF667 must be completed manually.

Note: Refer to the ICES User Reference Manual, Chapter 20 for instructions on the completion of the Personal Search and Arrest Report (BSF667) window.

- j) Record the police contact's name, badge number, and response information on the BSF667.
- k) List all personal belongings and additional goods not subject to seizure or detention as evidence on the BSF667.
- l) Complete the *Criminal Code* Incident Report (E641).

Note: Refer to Appendix C for a sample of the *Criminal Code* Incident Report (E641).

- m) Seize the goods under the *Customs Act* as well as any evidence required to substantiate the customs offence.

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Note: Follow procedures as outlined in Part 5, Chapter 3, Criminal Code-Seizure of Evidence and Goods for the processing of goods/evidence and for samples of the Exhibit Control Form (K129) and Evidence Seizure Receipt (E352).

- n) Complete the Notice to Crown Counsel (K127) and a K128, and attach the pink K128 “tag” to the seized item(s) to indicate the goods are the property of the CBSA.
 - o) In ICES, even though the system will generate “Terms of Release”, choose “Held for Evidence” under the disposition field.
 - p) Secure any evidence related to the *Criminal Code* offence.
 - q) Complete an Evidence Control Form (K129) listing the seized property to be turned over to the police agency of jurisdiction. Complete an Evidence Seizure Receipt (E352) listing the seized property and indicate that the goods have been seized under the *Criminal Code*.
 - r) Turn over the person and the property to the police.
 - s) Provide the police with a copy of the K129 and maintain a copy for the CBSA office file.
 - t) Obtain the signature of the receiving police officer on the BSF667 when the transfer of the person and their belongings has occurred.
 - u) Give one copy of the signed BSF667 to the receiving police officer and keep one copy for the CBSA office file.
 - v) Conclude all customs formalities prior to releasing the person, goods, evidence, or conveyance to police.
73. When a designated officer encounters a person in possession of property suspected to have been obtained by crime that is not subject to seizure under the *Customs Act*:
- a) Determine who is in possession of the goods.
 - b) If no limitations to arrest exist (i.e., *Criminal Code* – section 357 offence or value of the suspected stolen property exceeds \$5000), arrest the person using the following terms:
 - i) “I am arresting you as I believe on reasonable grounds that you are in possession of property knowing that the property was obtained by the commission of an offence”

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OR

- ii) “ I am arresting you as I believe on reasonable grounds that you are in possession of property obtained by the commission of an offence.”

Note: As section 357 (Bringing into Canada Property Obtained by Crime) is strictly an indictable offence, and there is no mechanism in place for a designated officer to release the subject, use discretion when dealing with items with a relatively low value. The offence may be better handled by utilizing section 354 (Possession of Stolen Property Obtained by Crime).

- c) If limitations exist, determine if public interest and court appearance are satisfied.
- d) If public interest and court are not satisfied (e.g. evidence), place the person under arrest.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures.

- e) Handcuff and frisk the person in accordance with CBSA policy and procedures.
- f) Advise the person of their right to counsel and caution them regarding the making of statements.

Note: It is strongly recommended that frisks be conducted by officers of the same sex as the person to be frisked. It is recognized that in certain situations and at smaller ports this will not always be possible.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures for guidelines on conducting frisks and applying handcuffs.

- g) Once the person has been provided with the opportunity to exercise their right to consult counsel, or declined this right, place them in custody pending the arrival of the police.

Note: Although a person may decline to consult counsel at this point in the process, they may exercise this right at any time.

Note: Refer to Part 6, Chapter 2, Care and Control of Persons in Custody Policy and Procedures.

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- h) Complete the Personal Search and Arrest Report (BSF667) window in ICES. For non-automated ports a copy of the BSF667 must be completed manually.

Note: Refer to the ICES User Reference Manual, Chapter 20 for instructions on the completion of the Personal Search and Arrest Report (BSF667) window.

- i) Complete the *Criminal Code* Incident Report (E641).

Note: Refer to Appendix C for a sample of the *Criminal Code* Incident Report (E641).

- j) Complete a Form K129 to transfer the goods to the police.

- k) Complete an Evidence Seizure Receipt (E352) listing the seized property and indicate that the goods have been seized under the *Criminal Code*.

Note: Follow procedures as outlined in Part 5, Chapter 3, Criminal Code – Seizure of Evidence and Goods for the processing of goods/evidence and for samples of the Exhibit Control Form (K129) and Evidence Seizure Receipt (E352).

- l) Contact the police agency of jurisdiction to request attendance at the CBSA office.
- m) Have the attending police officer sign the K129.
- n) Maintain copies of all forms for the CBSA office file.
- o) Record the police contact's name, badge number, and response information on the BSF667 (Personal Search and Arrest) window.
- p) Obtain the signature of the receiving officer on the BSF667 when the transfer of the person and their goods has occurred.
- q) Give one copy of the signed BSF667 to the receiving police officer and keep one copy for the CBSA office file.
- r) Conclude all customs formalities prior to releasing the person, goods, evidence, or conveyance to the police authorities.

Processing Persons Suspected of Abduction/Kidnapping.

Custody Orders

74. If a suspected abduction/kidnapping is in relation to a custody order, make every effort to ensure that the custody order is valid and that it reflects the true legal relationship between the parties.

Note: Foreign custody orders are not enforceable in Canada unless a Canadian Court has recognized it or, under the charging guidelines, a Crown Attorney is using it as grounds to lay charges under Section 283 of the *Criminal Code*.

Non-Designated Officers

75. When a non-designated officer has reasonable grounds to believe that a non-resident has abducted/kidnapped another person:
- a) Refer them to Citizenship and Immigration Canada (CIC).
 - b) If an Immigration officer is unavailable, request a designated officer and follow the next steps outlined for non-designated officers who encounter a person they suspect of kidnapping.
76. When a non-designated officer encounters a resident they suspect of kidnapping:
- a) Suspend the interview and tell the person to wait where they are.
 - b) Take immediate measures to obtain the assistance of a designated officer.
 - c) Turn over control of the interview to the designated officer.
 - d) Make detailed notes outlining the indicators that led to the suspicion of the offence of kidnapping.
 - e) If no designated officer is available, release the person and immediately report the details of the incident to the police agency of jurisdiction and to the appropriate *Our Missing Children Program* Regional Coordinator.

Designated Officers

76. When a designated officer has reasonable grounds to believe that a non-resident has abducted/kidnapped another person:

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- a) The designated officer may place the suspect under arrest, read them their right to counsel, and caution them regarding the making of statements.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures.

Note: If the offence is not readily apparent, (i.e. the victim telling the designated officer that they have been abducted), the subjects will be referred to Citizenship and Immigration Canada (CIC). If an immigration officer is not available, contact the on-call immigration officer.

Note: All instances involving foreign custody orders will be referred to CIC for processing.

- b) Handcuff and frisk the person in accordance with use of force policy and procedures.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures.

- c) Notify Citizenship and Immigration Canada immediately.
- d) Once the person has been provided with the opportunity to exercise their right to consult counsel, or declined this right, place them in custody pending the arrival of the police.

Note: Although the person may decline to consult counsel at this point in the process, they may exercise this right at any time.

Note: CBSA officers will allow foreign nationals to contact the embassy or consulate of their home country. This is in addition to being allowed to contact counsel.

Note: Foreign nationals include visitors holding citizenship in another country, including U.S. visitors and U.S. resident aliens, and persons temporarily residing in Canada (e.g. work or student visas, Minister's Permit, etc.)

Note: Refer to Part 6, Chapter 2, Care and Control of Persons in Custody Policy and Procedures.

- e) When the victim of a suspected abduction/kidnapping is present, determine if medical assistance is required and arrange for transport to a medical facility if necessary.

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Note: If the police will attend, make arrangements with CIC to furnish you with a completed IMM 421 form. Give this form to the police when they take custody of the person. Consultation between CIC, the responding police agency, and the CBSA will determine the best course of action regarding the abduction.

- f) Contact the police agency of jurisdiction.
 - g) Place the victim in an area away from the suspect and the public and arrange for an assisting officer, preferably of the same sex as the victim, to remain with them.
 - h) Provide the victim with blankets, pillows, water, etc. based on their requests and as seems appropriate to the circumstances.
 - i) Make detailed notes about the occurrence.
 - j) Conclude all customs formalities prior to releasing the person, evidence, or conveyance to the police agency of jurisdiction.
77. When a designated officer has reasonable grounds to believe that a Canadian resident or citizen has abducted/kidnapped another person:
- a) When the victim of a suspected abduction/kidnapping is present, determine if medical assistance is required and arrange for transport to a medical facility if necessary.
 - b) Contact the police agency of jurisdiction to request attendance at the CBSA office.
 - c) Place the victim in an area away from the suspect and the public and arrange for an assisting officer, preferably of the same sex as the victim, to remain with them.
 - d) Arrest the person by stating:

“I am arresting you as I believe on reasonable grounds that you have abducted/kidnapped this person.”
 - f) Read them their right to counsel and caution them regarding the making of statements.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures.

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- g) Handcuff and frisk the person in accordance with CBSA policy and procedures.

Note: It is strongly recommended that frisks be conducted by officers of the same sex as the person to be frisked. It is recognized that in certain situations and at smaller ports this will not always be possible.

Note: Refer to Part 6, Chapter 1, Arrest and Detention Policy and Procedures for guidelines on conducting frisks and applying handcuffs.

- h) Once the person has been provided with the opportunity to exercise their right to consult counsel, or declined this right, place them in custody pending the arrival of the police.

Note: Although the person may decline to consult counsel at this point in the process, they may exercise this right at any time.

Note: Refer to Part 6, Chapter 2, Care and Control of Persons in Custody Policy and Procedures.

- i) Provide the victim with blankets, pillows, water, etc. based on their requests and as seems appropriate to the circumstances.
- j) Complete the Personal Search and Arrest Report (BSF667) window in ICES. For non-automated ports a copy of the BSF667 must be completed manually.

Note: Refer to the ICES User Reference Manual, Chapter 20 for instructions on the completion of the Personal Search and Arrest Report (BSF667) window.

- k) Record the police contact's name, badge number, and response information on the BSF667.
- l) Obtain the signature of the receiving police officer on the BSF667 when the transfer of the person and their belongings has occurred.
- m) Give one copy of the signed BSF667 to the receiving police officer and keep one copy for the CBSA office file.
- n) Complete the *Criminal Code* Incident Report (E641).

Note: Refer to Appendix C for a sample of the *Criminal Code* Incident Report (E641).

- o) Make detailed notes about the occurrence.

- p) Conclude all customs formalities prior to releasing the person, evidence, or conveyance to the police authorities.

Completion of Appearance Notices (Form 9)

Note: Refer to Appendix B for a sample Appearance Notice (Form 9).

Designated Officer

- 78. When a designated officer believes that court appearance and public interest are satisfied and the police will not be responding but have agreed to proceed with criminal charges:

Note: There may be variances in procedures from region to region, and even from CBSA office to CBSA office as may be indicated in the police agreement/MOU.

- a) Advise the CBSA superintendent and court liaison officer, where applicable, of action and obtain a court date for the first appearance.
- b) Complete the Form 9 Appearance Notice with the following information:
 - i) full name of the accused;
 - ii) substance of the offence;
 - iii) date, time, and place of required court attendance (as per arrangements with the court liaison officer or superintendent); and
 - iv) signature of the accused.

Note: A person's refusal to sign will not invalidate the form.

- c) Give the duplicate copy to the accused person and advise them that they are released and will have to attend court at the specified time and date.
- d) Complete detailed notes on the incident and prepare a comprehensive report for furtherance to the police agency that will be responsible for laying the information and processing the charge.
- e) Give all relevant documentation to the court liaison officer or, where this position does not exist, the superintendent for transfer to the responsible police agency and for scheduling of the officer's court time.

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Note: Officers issuing Appearance Notices will be expected to “swear” the information before a Justice or Commissioner of Oaths, within a reasonable time after issuance, that the information contained in the Appearance Notice is true and accurate. Regions should seek assistance from their responding police agency of jurisdiction for direction.

79. Where a designated officer has issued an Appearance Notice to a young person, complete a Form 3.1 – Notice to a parent or adult with a legal duty to a young person.

REFERENCES

80. *Criminal Code*
Customs Act
Canadian Charter of Rights and Freedoms
Canada Customs and Revenue Agency Service Standards
Canada Customs and Revenue Agency Standards of Conduct
D and R Memorandum

Part 6

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 7

***CRIMINAL CODE* OFFENCES POLICY AND PROCEDURES**

Appendix A

***CRIMINAL CODE* SECTION 553 – LIST OF OFFENCES**

APPENDIX A

List of Offences - Section 553 *Criminal Code*

Section 553 – The jurisdiction of a provincial court judge, or in Nunavut, or a judge of the Nunavut Court of Justice, to try an accused is absolute and does not depend on the consent of the accused where the accused is charged in information

(a) with

- i) theft, other than theft of cattle
- ii) obtaining money or property by false pretences
- iii) unlawfully having in his possession any property or thing or any proceeds of any property or thing knowing that all or part of the property or thing or of the proceeds obtained by or derived directly or indirectly from the commission in Canada of an offence punishable by indictment or an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment,
- iv) having, by deceit, falsehood or other fraudulent means, defrauded the public or any person, whether ascertained or not, of any property, money or valuable security, or
- v) mischief under subsection 430(4), where the subject of the offence is not a testamentary instrument and the alleged value of the subject-matter of the offence does not exceed five thousand dollars;

(b) with counselling or with conspiracy or attempt to commit or with being an accessory after the fact to the commission of

- i) any offence referred to in paragraph (a) in respect to subject matter and value thereof referred to in that paragraph, or
- ii) any offence referred to in paragraph (c); or

(c) with an offence under

- i) section 201 (keeping gaming or betting house),
- ii) section 202 (betting, pool-selling, book-making, etc.),
- iii) section 203 (placing bets),
- iv) section 206 (lotteries and games of chance),
- v) section 209 (cheating at play),
- vi) section 210 (keeping common bawdy-house),
- vii) (repealed)
- viii) section 393 (fraud in relation to fares),
- viii.i) section 811 (breach of recognizance),
- ix) subsection 733.1(1) (failure to comply with probation order),
- x) paragraph 4(4)(a) of the *Controlled Drugs and Substances Act*, or

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- xi) subsection 5(4) of the *Controlled Drugs and Substances Act*. R.S., c. C-34, s. 483, 1972, c. 13, 2.40; 1974-75-76, c. 93, s. 62; RS.C. 1985, c. 27 (1ST Supp.), s. 104; 1992, c.1, s.58; 1994, c.44, s. 57; 1995, c. 22, s.2; 1996, c. 19, s.72; 1997, c.18, s.66; 1999, c. 3, s. 37; 2000, c. 25, s. 4.

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SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 7

***CRIMINAL CODE* OFFENCES POLICY AND PROCEDURES**

Appendix B

**FORM 9 – APPEARANCE NOTICE ISSUED BY A PEACE OFFICER TO A
PERSON NOT YET CHARGED WITH AN OFFENCE**

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Criminal Code Offences

APPENDIX B

FORM 9

(Section 493)

APPEARANCE NOTICE ISSUED BY A PEACE OFFICER TO A PERSON NOT YET CHARGED WITH AN OFFENCE

Canada, Province of, (*territorial division*).

To A.B., of, (*occupation*):

You are alleged to have committed (*set out substance of offence*).

1. You are required to attend court on day, the day of A.D., at o'clock in the noon, in courtroom No., at court, in the municipality of, and to attend thereafter as required by the court, in order to be dealt with according to law.

2. You are also required to appear on day, the day of A.D., at o'clock in the noon, at (*police station*), (*address*), for the purposes of the *Identification of Criminals Act*. (*Ignore if not filled in.*)

You are warned that failure to attend court in accordance with this appearance notice is an offence under subsection 145(5) of the *Criminal Code*.

Subsections 145(5) and (6) of the *Criminal Code* state as follows:

"(5) Every person who is named in an appearance notice or promise to appear, or in a recognizance entered into before an officer in charge or another peace officer, that has been confirmed by a justice under section 508 and who fails, without lawful excuse, the proof of which lies on the person, to appear at the time and place stated therein, if any, for the purposes of the *Identification of Criminals Act* or to attend court in accordance therewith, is guilty of

(a) an indictable offence and liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.

(6) For the purposes of subsection (5), it is not a lawful excuse that an appearance notice, promise to appear or recognizance states defectively the substance of the alleged offence."

Section 502 of the *Criminal Code* states as follows:

"502. Where an accused who is required by an appearance notice or promise to appear or by a recognizance entered into before an officer in charge or another peace officer to appear at a time and place stated therein for the purposes of the *Identification of Criminals Act* does not appear at that time and place, a justice may, where the appearance notice, promise to appear or recognizance has been confirmed by a justice under section 508, issue a warrant for the arrest of the accused for the offence with which the accused is charged."

Issued at a.m./p.m. this day of A.D., at

.....
(Signature of peace officer)

.....
(Signature of accused)

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SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

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***CRIMINAL CODE* OFFENCES POLICY AND PROCEDURES**


Appendix C

***CRIMINAL CODE* INCIDENT REPORT (E641) SAMPLE**

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Criminal Code Offences

APPENDIX C

	Canada Border Services Agency Agence des services frontaliers du Canada	
CRIMINAL CODE INCIDENT REPORT RAPPORT D'INCIDENTS - INFRACTIONS AU CODE CRIMINEL		Port file no. - N° de dossier du bureau d'entrée
Please forward report upon completion to your Officer Powers Regional Coordinator. Veuillez transmettre votre rapport complété à votre coordonnateur régional des pouvoirs accrus des agents.		
Port - Bureau d'entrée	Region - Région	Date and time of incident (yyyy/mm/dd hh:mm) - Date et heure de l'incident (aaaa/mm/jj hh:mm) <div style="display: flex; justify-content: space-between;"> Date Time - Heure </div>
Use of force applied Usage de la force appliqué	<input type="checkbox"/> No - Non <input type="checkbox"/> Yes - Oui	If yes, use of force report no. - Si oui, n° du rapport de l'utilisation de la force
Indicate the type of incident encountered (see definitions on next page) Indiquer le type d'incident (voir définitions page suivante)		
<div style="display: flex; flex-wrap: wrap;"> <div style="width: 50%;"> <input type="checkbox"/> Impaired/suspected drinking and driving - Alcool au volant ou conduite avec capacité de conduite affaiblies soupçonnés <input type="checkbox"/> Refusal to comply with a breath demand - Refus d'obtempérer à l'ordre de fournir un échantillon d'haleine <input type="checkbox"/> ASD warns - Avertissement ADA <input type="checkbox"/> Novice drivers with BAC - Conducteurs débutants avec CAS <input type="checkbox"/> Outstanding warrants - Mandats non exécutés <input type="checkbox"/> Missing/abducted children - Enfants disparus ou enlevés </div> <div style="width: 50%;"> <input type="checkbox"/> Stolen goods/vehicles - Marchandises ou véhicules volés <input type="checkbox"/> Assault - Voies de fait <input type="checkbox"/> Obstruction - Entrave <input type="checkbox"/> Other, specify - Autre, spécifiez </div> </div>		
Responding police agency Service de police d'intervention		
Date and time contacted (yyyy/mm/dd hh:mm) - Date et heure de la communication (aaaa/mm/jj hh:mm) <div style="display: flex; justify-content: space-between;"> Date Time - Heure </div>		Date and time of arrival (yyyy/mm/dd hh:mm) - Date et heure de l'arrivée (aaaa/mm/jj hh:mm) <div style="display: flex; justify-content: space-between;"> Date Time - Heure </div>
Police unable to respond (reason) - Incapacité d'intervention de la police (raison)		
Related documentation (K19/E350/Form 9/Warrant file, etc.) - Documents connexes (K19/E350/Formulaire 9/Dossier de mandat, etc.)		
Last name - Nom de famille		First name - Prénom
Date of birth (yyyy/mm/dd) - Date de naissance (aaaa/mm/jj)		Sex - Sexe <input type="checkbox"/> Male Masculin <input type="checkbox"/> Female Féminin
Address - Adresse		
Identification type - Type d'identification		Identification no. - Identification n°
Licence plate no. - N° de plaque d'immatriculation		Licence plate origin - Origine de plaque d'immatriculation
Flight no. (if applicable) - N° de vol (s'il y a lieu)		Country of origin - Pays d'origine
Narrative - Exposé des faits Please provide details of suspected encounter, such as where it was encountered (primary/secondary), number of subjects involved, number of customs officer(s) involved, was/were subject(s) cooperative, etc. Veuillez fournir les détails entourant la rencontre du suspect, c.-à-d. l'endroit (primaire ou secondaire), le nombre de suspects impliqués, le nombre d'agents des douanes qui ont participé, le suspect a-t-il collaboré, etc.		

E641 (04)

EN Part 6 Chapter 7

Criminal Code Offences

APPENDIX C

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Inspector - Inspecteur	Badge no. - N° d'insigne
------------------------	--------------------------

Definitions

Impaired/Suspected Drinking and Driving

Encounters with drivers who are suspected of being impaired and where some action has been taken such as :

- Situations where a police service is contacted for follow-up actions, whether or not police were able to attend.
- Drivers who register a **FAIL** on the ASD.
- Asking him/her to park vehicle and find alternate means of transportation.
- Asking that a sober passenger take over driving.

Refusal to provide a breath sample

- Drivers who refuse to comply with the demand for the ABAI breath sample.
- Drivers who refuse to comply with the demand for the ASD breath sample.

ASD Warns

- Drivers register a **WARN** on the approved screening device (ASD).

Novice drivers with BAC:

Novice drivers who demonstrate that they have blood alcohol concentration (BAC). This box should **only** be checked off if this is a provincial *Highway Traffic Act* violation.

Outstanding warrants

System queries (CIPC) which are positive for outstanding Canadian warrants of all kinds issued for the arrest of an individual, whether or not police services are able to respond to the call.

Missing/Abducted Children

All interceptions of abducted/missing children which yield positive results.

Stolen Goods/Vehicles

All goods or vehicles where there are reasonable grounds to believe that they have been stolen.

Assault

Incidents of assault between travellers or assaults against customs officers.

Obstruction

Incidents of willfully obstructing or resisting a customs officer in the execution of his/her duties.

Other

Any incidents encountered whereby a criminal offence has been committed and/or is suspected of having been committed or is in the process of being committed. Please specify the offence (e.g., public disturbance, unlawful assembly).

Définitions

Alcool au volant ou conduite avec capacité de conduite affaiblies soupçonnés

Rencontre avec des conducteurs qui sont soupçonnés de conduite avec capacité de conduite affaiblies et où des mesures ont été prises, telles que :

- Cas où on communique avec un service de police pour des mesures de suivi, que la police ait été en mesure de se rendre sur les lieux ou non.
- Conducteurs qui obtiennent un **ÉCHEC** à l'ADA.
- Demander à la personne de stationner le véhicule et de trouver un autre moyen de transport.
- Demander à un passager à jeun de conduire.

Refus d'obtempérer à l'ordre de fournir un échantillon d'haleine

- Conducteurs qui refusent d'obtempérer à l'ordre de fournir un échantillon d'haleine pour l'AA.
- Conducteurs qui refusent d'obtempérer à l'ordre de fournir un échantillon d'haleine pour l'ADA.

Avertissement ADA

- Les conducteurs qui obtiennent un **AVERTISSEMENT** de l'appareil de détection approuvé (ADA).

Conducteurs débutants avec CAS :

Les conducteurs débutants qui ont une concentration d'alcool dans le sang (CAS). Cette case doit **uniquement** être cochée s'il s'agit d'une infraction au *Code de la sécurité routière* d'une province.

Mandats non exécutés

Recherche dans le système (CIPC) qui donne un résultat positif relatif à des mandats non exécutés de toutes sortes délivrés au Canada pour l'arrestation d'une personne, que les services de police soient en mesure ou non d'intervenir.

Enfants disparus ou enlevés

Toutes interceptions d'enfants disparus ou enlevés qui donnent des résultats positifs.

Marchandises ou véhicules volés

Tous les cas où il y a des motifs raisonnables de croire que les marchandises ou les véhicules ont été volés.

Voies de fait

Incidents de voies de fait entre voyageurs ou voies de fait sur un agent des douanes.

Entrave

Entrave ou résistance délibérées à l'accomplissement des fonctions d'un agent des douanes.

Autre

Tout incident où une infraction au Code criminel a été commise, ou est soupçonnée d'avoir été commise ou bien qui est en train d'être commise. Veuillez préciser l'infraction (c.-à-d. désordre public, attroupement illégal).

EN Part 6 Chapter 8

**Vehicular Transport of Persons
Part I - Guiding Principles**

ENFORCEMENT MANUAL

Part 6

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 8

VEHICULAR TRANSPORT OF PERSONS UNDER ARREST OR DETENTION

PART I - GUIDING PRINCIPLES

16/01/09

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Please note that Part II will be available once completed

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to transport persons under arrest or detention when required in support of the enforcement and/or administration of CBSA legislation.

The following policy section is presented in two parts:

Part I, Guiding Principles, gives general policy guidelines for qualified officers who transport arrested/detained persons by vehicle. For general guidelines, please contact the Horizontal Policy and Planning Division, Enforcement Manual Section within Headquarters.

Part II, Annexes, provides more specified procedural instruction to the specified officers, whether it be Border Services Officers, Regional Intelligence Officers, Criminal Investigators or Inland Enforcement Officers. For further clarification regarding the procedures for vehicular transportation, please consult your respective Headquarters program representatives.

DEFINITIONS

2. Refer to Part 11 - Glossary.
3. Designated contact – Communications centre, home office, superintendent or contact at the destination/CBSA office or detention facility.
4. Qualified officer – a CBSA officer who is deemed to have met the requirements of transporting persons under arrest or detention as set forth in this policy. Throughout the remainder of the policy, where the term “officer” is used, it will refer only to those officers that are deemed qualified to transport.
5. Secured vehicle – a CBSA vehicle that has a protective barrier installed.
6. Non-secured vehicle – a CBSA vehicle that does not have a protective barrier installed.

PURPOSE AND SCOPE

7. The purpose of this policy is to establish the requirements for transporting persons within Canada under arrest or detention in CBSA vehicles. They apply to criminal investigators, intelligence officers, inland enforcement officers and border services officers involved in such activities.

EN Part 6 Chapter 8

Vehicular Transport of Persons Part I - Guiding Principles

8. Some offices use the assistance of the RCMP, other qualified CBSA personnel or local police to transport arrested/detained persons. In some cases, pursuant to negotiated contracts, commissionaires or security guards transport arrested/detained persons within Canada acting on behalf of certain CBSA programs.
9. In the event that CBSA officers have to perform transport duties they must be qualified to transport arrested or detained persons. All qualified border services officers, criminal investigators, intelligence officers and inland enforcement officers performing transportation functions must maintain certification in Control and Defensive Tactics, CPR and first aid certification.
10. These guidelines should be read in conjunction with other chapters of the following manuals:

Enforcement Manual:

- a) Part 6 Chapter 1 Arrest and Detention;
- b) Part 6 Chapter 2 Care and Control of Persons in Custody;
- c) Part 6 Chapter 3 Arrest and Detention of Young Persons;
- d) Part 6 Chapter 4 Foreign Representatives;
- e) Part 6 Chapter 5 Use of Force Policy and Procedures;
- f) Part 6 Chapter 7 Criminal Code Offences Policy and Procedures; and
- g) Part 9 Chapters 1 and 2, Customs Prosecution Policy and Procedures.

Program and Policy Manuals for CIC/CBSA:

- a) ENF7 Investigations and Arrests;
- b) ENF 10 Removals;
- c) ENF 12 Search, Seizure, Fingerprinting and Photographing; and
- d) ENF20 Detentions.

Regional transport and detention policies

Training guidelines:

- a) Control and Defensive Tactics procedures;
- b) Transportation Control Tactics procedures; and
- c) Enforcement Training Program I, II, III (Investigations, Removals, and Escorts).

POLICY GUIDELINES

General

- 11. Officers must exercise reasonable care for the protection and well-being of themselves and all persons in their custody and are to take precautions that will help ensure that these persons are protected from harm to themselves or from others.
- 12. Officers will not knowingly transport persons requiring urgent medical attention. As is the case with all medical emergencies, medical staff and/or an ambulance must be summoned.
- 13. The physical well being of persons under arrest/detention must be monitored during transit. Officers must call for medical attention (911) if persons report or display symptoms of serious illness (e.g. shortness of breath, loss of consciousness, and/or severe bleeding).

Arrest and detention considerations

- 14. A risk assessment is required before any transportation of the arrested/detained person and shall be ongoing for the duration of the transport.
- 15. Arrested or detained persons must be frisked/searched before being placed in the vehicle for transport. The arrested/detained person must be frisked/searched upon all changes in custody within the CBSA.

Restraints

- 16. The arrested/detained person being transported in CBSA vehicles must be restrained should a risk assessment deem appropriate, and frisked/searched in accordance with the Arrest and Detention procedures described in the enforcement manuals.

Notebooks

17. It is mandatory that the officer prepares and retains notes regarding all details of the transport of the arrested or detained person as well as all of their personal effects in accordance with the procedures outlined in the enforcement manuals.

Communication

18. A transportation plan, including contact numbers, planned route, scheduled stops and estimated time of arrival at the destination/CBSA office/detention facility should be completed and given to the designated contact prior to departure. The amount and type of information collected, as it is procedural in nature, will be determined by the program administered.
19. Prior to, during and after transport, officers should remain in regular communication with the designated contact.
20. The ability to maintain contact with the designated contact is essential to the safety of the officer and the person under arrest/detention. Two-way radios and cellular telephones must be charged and functioning properly to ensure the officers ability to stay in communication with the designated contact.

Transport procedures

21. The vehicles used for transporting arrested/detained persons must be in good working order and, when possible, have sufficient fuel for the trip.
22. The vehicle used for transport must be thoroughly searched immediately before and immediately after transporting the person to any location to ensure that there are no objects present that may be used as a weapon against the officer or may present a risk to the person being transported. If applicable, remove or secure and document all objects.
23. It is strongly recommended that all transports be conducted in teams of two. However, where a risk assessment deems appropriate, a single officer of the same gender as the arrested/detained person may transport. When a single officer is conducting the transport, it must be done in a secured vehicle.
24. All transports of arrested/detained persons should be done in secured vehicles wherever possible.
25. Secure all personal belongings during transport.

EN Part 6 Chapter 8

Vehicular Transport of Persons Part I - Guiding Principles

26. Reasonable care must be exercised to ensure the person does not harm himself/herself, any other person, and attempt to escape or cause damage to the vehicle or outside facilities.
27. Vehicles must be equipped with first-aid kits and fire extinguishers.
28. It is recommended that two or more arrested/detained persons should not be transported in a vehicle without a protective screen. Multiple vehicles should be used when transporting two or more arrested/detained persons when possible.
29. Officers should not allow arrested/detained persons to communicate with anyone, including counsel, during transport.

Hospital

30. If a person in CBSA custody requires medical care during transport, prior to transporting the arrested/detained person to the hospital, it is recommended that that advanced notice be given to the hospital when possible. Hospitals may refuse to take arrested/detained persons due to lack of facilities to accommodate these situations.

Meals

31. If the detention or the transport is lengthy and the person under arrest or detention must be fed and it is safe to do so, ensure that all meals are taken to a secure area, such as a:
 - a) transport vehicle;
 - b) CBSA office;
 - c) detention centre; or
 - d) police detachment.

Restrooms

32. Persons under arrest or detention must be given an opportunity and reasonable access to restroom facilities. It is recommended that officers offer the arrested/detained person the use of the restroom facility at the location of arrest/detention prior to transport. When a restroom facility is required en route, request the use of the facilities at the nearest police detachment.
33. In the event that a police detachment is not available, locate a rest area or service station and only proceed when a risk assessment deems it safe.

Escape

34. In the event of escape, qualified officers must:

- a) notify the local police (dial 911);
- b) relay to the police all pertinent information regarding the arrested/detained person;
- c) notify the designated contact and the intended destination/CBSA office/detention facility and designated contact; and
- d) supply the police with copies of identification.

35. Officers must not engage in vehicle pursuits (to follow in their vehicle in order to overtake or chase).

Arrival at destination/CBSA office/detention facility

36. Upon arrival at the destination/CBSA office/detention facility, the officer should inform the designated contact.

37. After removing the arrested/detained person from the vehicle, the vehicle must be searched.

38. Once inside the detention facility, arrested/detained persons and their personal belongings must be turned over to the appropriate authority and signed for in accordance with the procedures of the detention facility.

39. Where practicable, documentation must be signed by both the officer and the contact at the destination/CBSA office/detention facility to validate the transfer and a copy retained for the CBSA.

40. CBSA restraints should be retrieved once the transfer of the arrested/detained person is complete.

41. Details regarding the arrested/detained person, any personal searches conducted, medical conditions, the officers' names and badge numbers, and all applicable documents must be provided to the appropriate authority at the detention facility. Each region should determine the standard local procedures.

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**Vehicular Transport of Persons
Part II - Appendix _____**

PROTECTED A

ENFORCEMENT MANUAL

Part 6

SEARCHES AND ENFORCEMENT ACTIONS – PERSONS

Chapter 9

CUSTOMS CONTROLLED AREAS

PROTECTED A

POLICY STATEMENT

1. In its ongoing efforts to ensure Canada's security and prosperity, the Canada Border Services Agency (CBSA) combats internal conspiracies through the enforcement of Customs Controlled Areas (CCA) legislation. The CBSA's administration of its responsibilities with respect to CCAs is in accordance with the authorities and provisions set out in the *Customs Act* and Regulations, including the CCA Regulations, the *Criminal Code* and jurisprudence, within the limitations set out by the *Canadian Charter of Rights and Freedoms*.

DEFINITIONS

2. Refer to Part 11, Glossary.

AUTHORITIES

Customs Act

3. Section 7.1 – Obligates every person to provide true, accurate and complete information to an officer in the administration or enforcement of the *Customs Act*, or any other Act of Parliament, that prohibits, controls or regulates the importation or exportation of goods.
4. Subsection 11.2(1) – Authorizes the Minister to designate an area as a CCA.
5. Subsection 11.2(2) – Authorizes the Minister to amend, cancel or reinstate a designated CCA.
6. Subsection 11.3(1) – Obligates the owner or operator of a facility where a CCA is located to allow access only to authorized or prescribed persons.
7. Subsection 11.3(2) – Authorizes the Minister to amend, suspend, renew, cancel or, reinstate an authorization made under 11.3(1)(a).
8. Subsection 11.4(1) – Obligates every person when leaving a CCA, if requested to do so by a CBSA officer, to: present and identify themselves; report and make available any goods they acquired while in the CCA; and answer truthfully any questions asked by a CBSA officer.
9. Subsection 11.4(1.1) - Obligates every person within a CCA, if requested to do so by a CBSA Officer, to: present and identify themselves and answer truthfully any questions asked by a CBSA officer.

PROTECTED A

10. Subsection 11.4(2) – Persons who are required to present themselves under s.11 or to report goods under s.12 are exempt from requirements under ss.11.4(1) and 11.4(1.1).
11. Section 11.5 – Authorizes the Governor in Council to make regulations prescribing persons who may be granted access to CCAs under paragraph 11.3(1)(b), and the manner in which a person must present himself or herself under paragraphs 11.4(1)(a) and (1.1)(a) and report goods under paragraph 11.4(1)(b).
12. Section 15 – Obligates any person who finds or has in his possession goods that have been imported and who believes on reasonable grounds that the *Customs Act* or any other Act of Parliament has not been complied with in respect of the goods, or that duties levied have not been paid, to report to an officer that he/she has found the goods or has them in his/her possession.
13. Subsection 99.2(1) – Authorizes an officer to search any person, other than prescribed persons, who is within or leaving a CCA, if the officer suspects on reasonable grounds the person has secreted on or about their person anything that would contravene the *Customs Act*, anything that would afford evidence of a contravention under this and other Acts of Parliament, or any goods the importation or exportation of which is prohibited, controlled or regulated under this or any other Act of Parliament.
14. Subsection 99.2(2) – Authorizes an officer to search prescribed persons within or leaving a CCA in accordance with the Regulations.
15. Subsection 99.2(3) – Obligates an officer, upon request of the person who is to be searched, to immediately take that person before the senior officer at the place where the search is to be conducted.
16. Subsection 99.2(4) – Authorizes the senior officer, if in agreement with the officer that the search of that person under either ss.99.2(1) or 99.2(2) may proceed, to direct the person to be searched or, if the senior officer does not agree, to discharge the person.
17. Subsection 99.2(5) – Prohibits an officer who is not of the same sex as the person to be searched from conducting that search and, if there is no officer of the same sex as the person to be searched at that location, allows the officer to authorize a suitable person of the same sex to conduct the search.
18. Subsection 99.3(1) – Authorizes an officer to conduct a non-intrusive examination without individualized suspicion of goods in the custody or possession of a person who is within or leaving a CCA.

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19. Subsection 99.3(2) – Authorizes an officer who has reasonable grounds to suspect that the Act or any other Act of Parliament has been or might be contravened to examine any goods in the custody or possession of a person who is within or leaving a CCA, and open or cause to be opened any baggage, package or container and take samples of the goods in reasonable amounts.
20. Subsection 99.3(3) – Authorizes an officer to open, examine and detain any abandoned goods found in a CCA.
21. Section 99.4 – Authorizes the Governor in Council to make regulations prescribing the class of persons who can be searched, the circumstances and manner in which such searches are to be conducted and the types of search that may be conducted under ss.99.2(2) and the manner in which non-intrusive examinations are to be conducted, and the equipment used for such examinations conducted under ss.99.3(1).
22. Section 110 – Authorizes an officer to seize goods (and any conveyances made use of in respect of the goods) if the officer believes on reasonable grounds that the Act or Regulations have been contravened in respect of those goods.
23. Section 153.1 – Prohibits any person from interfering with, molesting, hindering or preventing an officer from doing anything that the officer is authorized to do under the *Customs Act*.
24. Section 160 – Provides penalties for enumerated offences which are considered more serious. Prosecution can be instituted by a summary conviction procedure or by indictment, depending on the circumstances and the gravity of the offence.
25. Sections 160.1 and 161 – Provide for the punishment by summary conviction of all offences that are not enumerated in s.160.

Note: Contravention of the prohibition in s.153.1 is an offence under s.160.1. Contraventions of the obligations in s.11.3 (entry prohibited) and 11.4 (CCA – presentation and reporting) are offences under s.161, rather than s.160.

26. Section 163.4 – Authorizes the President to designate any officer and provide that officer with a certificate of designation which is admissible in evidence as proof of that officer's designation.
27. Section 163.5 – Provides Designated CBSA officers with the limited authority to arrest and detain individuals without warrant in relation to offences under the *Criminal Code* or any other Act of Parliament, and to make a request for a sample of breath or blood from suspected impaired drivers. These authorities make no reference to the CCA regime – a Designated Officer's authority under s.163.5 is not affected by being

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in a CCA and all other requirements regarding the exercise of the authority under s.163.5 applies.

Customs Controlled Areas Regulations

28. Section 2 – For the purposes of paragraph 11.3(1)(b) of the Act, the following persons are prescribed as persons who may be granted access to a CCA by the owner or operator of a facility where a CCA is located:
 - a. any person who is arriving in Canada;
 - b. any person who is about to leave Canada;
 - c. any person who requires access to a CCA for the purpose of administering or enforcing an Act of Parliament or responding to an emergency or for a purpose relating to the health or safety of a person; and
 - d. any person who requires access to a CCA for a purpose relating to their business or employment.
29. Section 3 – For the purpose of presenting, this requires that the presentation be done in person, and for the purpose of making a report, this requires that the report be made orally.
30. Section 4 - For the purposes of the authority to search persons in a CCA set out in ss.99.2(2) of the Act, the prescribed persons are the persons set out in paragraphs 2(c) and (d) of the CCA Regulations, as set out above.
31. Subsection 5(1) - For the purposes of ss.99.2(2) of the Act, an officer may conduct a frisk search — a search of a person's clothed body by manual or technical means — of a person prescribed under s.4 if the officer suspects on reasonable grounds that the person has secreted on or about their person anything in respect of which the Act has been or might be contravened, anything that would afford evidence with respect to a contravention of the Act or any goods the importation or exportation of which is prohibited, controlled or regulated under the Act or any other Act of Parliament.
32. Subsection 5(2) - For the purposes of ss.99.2(2) of the Act, an officer may conduct a strip search — a visual inspection of a person's naked body during which the person may be required to open his or her mouth — of a person prescribed under s.4 if the officer believes on reasonable grounds that the person has secreted on or about their person anything in respect of which the Act has been or might be contravened, anything that would afford evidence with respect to a contravention of the Act or any

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goods the importation or exportation of which is prohibited, controlled or regulated under the Act or any other Act of Parliament.

33. Subsection 5(3) - A strip search must be conducted in a private area.
34. Section 6 - For the purposes of ss.99.3(1) of the Act, a nonintrusive examination of goods may be conducted using an imaging tool, trace particle or vapour detection tool, nuclear or radiation detection tool or other detection tool that permits the examination of goods without opening them.

Charter of Rights and Freedoms

35. Section 7 – States that everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. This includes the right against self-incrimination.
36. Section 8 – States that everyone has the right to be secure against unreasonable search or seizure.
37. Section 9 – States that everyone has the right not to be arbitrarily detained or imprisoned.
38. Section 10 – States that everyone has the right on arrest or detention:
 - a. to be informed promptly of the reasons therefore;
 - b. to retain and instruct counsel without delay and to be informed of that right; and
 - c. to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

Criminal Code

39. Subsection 495(1) – Authorizes CBSA officers to arrest persons found committing or known to have committed a criminal offence under the *Customs Act* or IRPA.
40. Subsection 495(2) – Sets limitations on when a CBSA officer will arrest persons found committing or known to have committed a criminal offence under the *Customs Act* or IRPA.

Immigration and Refugee Protection Act

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41. Section 18.1 – Requires that every person seeking to enter Canada appear for an examination to determine whether that person has a right to enter or may become authorized to enter, and remain, in Canada.
42. Section 18.2 – Applies s.18.1 to persons who, without leaving Canada, seek to leave an area at an airport that is reserved for passengers who are in transit or who are waiting to depart Canada.

PURPOSE AND SCOPE

43. The purpose of this policy is to provide guidelines to CBSA officers regarding the administration of their authorities within CCAs.
44. This policy applies to all CBSA officers and all modes of transportation.

BACKGROUND

45. In the past, the *Customs Act* afforded CBSA officers with powers of questioning, examination and search that were limited to international travellers and goods arriving in and departing from Canada. With the implementation of CCAs, CBSA officers now have authority to question, examine and search domestic workers and domestic origin travelers in designated areas – however, this authority is different than that which applies to persons entering or leaving Canada. This authority will enable CBSA officers to conduct the following types of questioning/exam/search (in order of escalation):
 - a. routine questioning to verify the identity of and justification for the presence of an individual in or leaving a CCA and establish the nature of goods acquired while in the CCA (in accordance with *Customs Act*, ss.11.4(1) and 11.4(1.1))
 - b. the non-intrusive examination of goods in the possession or custody of a person who is in or who is leaving a CCA (in accordance with the *Customs Act*, ss.99.3(1) and CCA Regulations, s.6)
 - c. the examination of goods in the possession or custody of a person who is in or who is leaving a CCA (in accordance with the *Customs Act*, ss.99.3(2))
 - d. the frisk search of person for evidence (in accordance with the *Customs Act*, s.99.2 and CCA Regulations, ss.5(1))

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- e. the strip search of person (in accordance with the *Customs Act*, s.99.2 and CCA Regulations, ss.5(2))
46. The Supreme Court of Canada decision *Regina vs. Simmons*, held that international travellers crossing an international border have a lowered expectation of privacy. Therefore, routine Customs examinations and searches including questioning, baggage and pocket searches do not constitute a detention for the purposes of the *Charter of Rights and Freedoms*.
- Domestic workers (e.g. baggage handlers, stevedores, cleaners) are not considered by the Simmons decision and do not have the same lowered expectation of privacy as persons crossing an international border. Therefore, the standard for searches of persons and examination of goods conducted under the CCA legislation (s.99.2 and 99.3 of the *Customs Act*) are higher than those conducted under other sections of the Act dealing with the inward or outward movement of people and goods.
- It is important that officers understand the distinction between these authorities and use them appropriately according to circumstance. For instance, when a person arriving in Canada has accessed a CCA, officers should look to authorities provided for in dealing with persons arriving in Canada rather than those relating to CCAs.
- When a person is detained during the course of an Officer's search of that person, that person **must** be afforded all provisions found in s.10 of the *Charter of Rights and Freedoms* as well as the right to remain silent under s.7 of the *Charter*.
47. The examination of goods in the custody or possession of a person in or leaving a CCA under ss.99.3(2) of the *Customs Act* on the basis of a reasonable grounds to suspect will likely give rise to a detention triggering rights under the *Charter* which include those under s.10 of the *Charter* as well as the right to remain silent under s.7 of the *Charter*.
48. The non-intrusive examination of goods without individualized suspicion in the possession of a person in or leaving a CCA under ss.99.3(1) of the *Customs Act* and s.6 of the CCA Regulations will likely not give rise to a detention of the individual so long as the non-intrusive examination of goods is not arbitrary and carries no stigma.
49. Section 11.3 of the *Customs Act* requires that the owner/operator of a facility restrict CCA access to "authorized" or "prescribed" persons only.
50. Subsection 11.4(1) of the *Customs Act* requires persons leaving a CCA upon the request of an officer to: present and identify themselves to an officer; report and present any goods acquired within a CCA; and answer truthfully questions asked by an officer in the performance of his or her duties.

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51. Subsection 11.4(1.1) of the *Customs Act* requires persons inside a CCA upon the request of an officer to: present and identify themselves to an officer; and answer truthfully questions asked by an officer in the performance of his or her duties.

POLICY GUIDELINES

General

52. CBSA officers are required to complete mandatory CCA training prior to administering CCA legislation.
53. CBSA officers are authorized to question, examine or search persons and/or goods within or at the exit of a CCA subject to the requirements of the CCA legislation.
54. Sections 11.2 through 11.5 and 99.2 through 99.4 of the *Customs Act* neither supersede nor diminish other authorities provided for in the Act.

Designation of CCAs

55. The Minister of Public Safety has the legislative authority to designate any area as a CCA pursuant to s.11.2 of the *Customs Act*.
56. The Minister has delegated the legislative authority to designate a CCA to the CBSA Vice President of Programs Branch.
57. CCAs are specifically and individually designated for each location.
58. CCAs are designated areas, typically within a Canadian POE, where there is a likelihood that departing domestic travellers and/or domestic workers come into contact with international travellers and/or goods that have not yet been processed and cleared by the CBSA.
59. Specific exclusions are detailed in each location's designation package (details for site specific designations can be viewed at <http://www.cbsa-asfc.gc.ca/security-securite/cca-zcd/menu-eng.html>).

Access to CCA

60. The CCA Regulations prescribe that the following persons may be permitted access to a CCA:
 - a. any person who is arriving in Canada;

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- b. any person who is about to leave Canada;
- c. any person who requires access to the CCA for the purpose of administering or enforcing an Act of Parliament or responding to an emergency or for a purpose relating to the health/safety of a person; and
- d. any person who requires access to the CCA for a purpose relating to their business or employment.

PROCEDURES

Presentation and Reporting

- 61. The authorities provided for in s.11.3 through 11.5 place obligations upon facility owners and persons inside and leaving a CCA, while s.99.2 through 99.4 of the *Customs Act* provide officers with their authority to search persons and examine goods inside and leaving CCAs.
- 62. All persons within or leaving a CCA must present and identify themselves to an officer when requested to do so by an officer in accordance with ss.11.4(1) and 11.4(1.1) of the *Customs Act*. This obligation does not apply to persons who are required to present themselves under s.11 and report goods under s.12 of the *Customs Act*.
- 63. Any person who enters a CCA for the purpose of leaving Canada but does not leave Canada must report to a CBSA officer upon request in accordance with ss.11.4(1) and/or 11.4(1.1) of the *Customs Act*. An individual may enter a part of a CCA which is an area of an airport reserved for passengers who are waiting to leave Canada, and then seek to leave that area without leaving Canada. In such a case, that person is required to appear before an officer for an examination under the *Immigration and Refugee Protection Act* in accordance with s.18 of that Act.

Interviewing of persons

- 64. An officer may stop and interview a person who is within or leaving a CCA. Officers must identify themselves.
- 65. All persons within or leaving a CCA must answer truthfully any questions asked by a CBSA officer in the performance of his or her duties under the *Customs Act* or any other Act of Parliament (pursuant to paragraphs 11.4(1)(c) and 11.4(1.1)(b) of the *Customs Act*. This obligation does not apply to persons who are required to present

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themselves under s.11 and report goods under s.12 of the Act as they have separate obligations under s.11 and s.12 of the Act.

Initial routine questioning must be verbal only with no physical record made. During the interview, an officer may:

- a. ask the person's full name and date of birth;
- b. request to see the person's Restricted Access Identity Card, if applicable;
- c. request to see a piece of government photo identification;
- d. ask the purpose of being in a CCA;
- e. ask if any goods were acquired while in the CCA; and,
- f. with respect to persons who are leaving a CCA only, ask to see any goods the person acquired while in the CCA. These goods may include personal items such as, but not limited to, purses, backpacks or duffel bags.

66. The officer must be cognizant of situational, verbal, non-verbal and documentary indicators developed during the interview as they may form the basis for identifying an individual's demeanour. **Physical records of such indicators may only be created in the case of detention or arrest.**

Note: The CBSA defines an indicator as "an abnormality or inconsistency in information or physical appearance or a trend that could create a reasonable suspicion in the mind of an officer that laws administered by the CBSA may have been contravened." It is important to note that the race, age, and sex of a person are not considered indicators.

67. Indicators observed during the interview may be used to support the reasonable grounds required to pose specific questions about the content of baggage, packages and conveyances, or carry out an intrusive examination of baggage, packages and containers or a search of a person for evidence, all of which will trigger a detention for the purposes of the *Charter*.

Note: The courts have found that an officer's reasonable grounds to suspect or belief have both a subjective and objective component. These grounds are also contextual insofar as they vary with the totality of a given circumstance.

Unauthorized access

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68. An officer may question any person inside a CCA or who is leaving a CCA in order to confirm the person's identity and his/her authority to be in a CCA.
69. In a CCA, officers questioning such persons will identify themselves and ask the person to present their identification. The person must convey a valid reason for accessing a CCA.
70. When an unauthorized person is encountered in a CCA, the officer must determine if this was a legitimate oversight or if the person is/was engaged in a suspicious activity.
71. Officers should report all incidents of unauthorized access to CCAs by completing an ORS report and advising their immediate superintendent. The officer will continue by ensuring that the appropriate action is taken by the facility owner/operator which has the obligation to restrict access to CCAs pursuant to ss.11.3(1) of the Act. A person should not be searched, detained or arrested solely because he or she is not authorized to be in a CCA.

Non-intrusive examination of goods

72. All goods in the possession of a person within or leaving a CCA may be subjected to a non-intrusive examination without individualized suspicion using imaging tools, trace particle or vapour detection tools or nuclear or radiation detection pursuant to ss.99.3(1) of the *Customs Act* and s.6 of the CCA Regulations. The non-intrusive examination of goods must be either completed on a random basis or on the goods of all persons within or leaving a CCA, for a specified time (e.g. a "blitz").

Examination of goods

73. Where an officer has **reasonable grounds to suspect** that any baggage, package or container contains any goods in respect of which the *Customs Act* or any other Act of Parliament administered or enforced by the officer has been or might be contravened, the officer may examine baggage, packages or containers and their contents in the custody or possession of a person who is in or who is leaving a CCA in accordance with the *Customs Act*, ss.99.3(2). Such examinations will trigger a detention of the person who has custody or possession the goods, bags, packages or containers being examined. This will trigger that detained individual's *Charter* rights.
74. Authorities related to CCAs neither supersede nor diminish any other authorities provided for in the *Customs Act*. For instance, anytime an officer suspects on reasonable grounds that a person is removing imported goods from a customs office

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that have not yet been released by CBSA, the officer may stop that person and examine those goods as per paragraph 99(1)(e) of the *Customs Act*. Should such an examination result in the detention of the person who has custody or possession of the goods, bags, packages or containers being examined, this would trigger that detained individual's *Charter* rights.

75. Where an officer encounters goods leaving a CCA that the officer has reasonable grounds to believe contravene the *Customs Act* or Regulations, such goods may be seized pursuant to s.110 of the *Customs Act*.
76. A person may be subject to arrest where there are reasonable grounds to believe the person has committed an indictable offence under the *Customs Act*. A contravention of any of the provisions of the *Customs Act* set out in s.160 of the Act constitutes an indictable offence. A contravention of the obligations in s.11.4 would not constitute an indictable offence.
77. A person may also be subject to arrest where that person is found committing any criminal offence under the *Customs Act*, which would include a contravention of the obligations in s.11.4 of the *Customs Act* which constitutes an offence punishable upon summary conviction pursuant to s.161 of the Act. A person inside or leaving a CCA may also be subject to arrest under s.163.5 of the *Customs Act* where a designated CBSA officer is performing the normal duties of an officer under the *Customs Act* at a customs office and finds a person committing an offence or has reasonable grounds to believe has committed an indictable offence under any another Act of Parliament. This authority is subject to the restrictions in ss.163.5(3) and (4) of the *Customs Act*, in ss.495(2) of the *Criminal Code* and to the CBSA's own policy and procedures in such matters.

Note: Refer to the EN Manual Part 6, Chapter 7 on *Criminal Code* Offences, Policy and Procedures, for guidelines.

Frisk Search

78. A frisk search (for evidence) can take place pursuant to s.99.2 of the *Customs Act* and ss.5(1) of the CCA Regulations where an officer has reasonable grounds to suspect that a person has secreted on or about his person:
 - a. anything in respect of which the *Customs Act* has been or might be contravened;
 - b. anything that would afford evidence with respect to a contravention of the *Customs Act*; and

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- c. any goods, the importation or exportation of which is prohibited, controlled or regulated by the *Customs Act* or any other Act of Parliament.
79. A frisk search (for evidence) of a person who is in or who is leaving a CCA will constitute a detention of that person for the purposes of the *Charter*. This will trigger rights under s.10 of the *Charter* and the right to remain silent under s.7 of the *Charter*.
80. Persons who are prescribed by the CCA Regulations within or leaving a CCA may be subject to a frisk search (for evidence) (pursuant to ss.99.2(2) of the *Customs Act* and ss.5(1) of the CCA Regulations).
81. For the purposes of ss.99.2(2) of the *Customs Act*, the prescribed persons are the persons set out in paragraphs 2(c) and (d) of the CCA Regulations. (see paragraph 28).
82. Search of persons (pursuant to s.99.2 of the *Customs Act* and s.5 of the CCA Regulations) is categorized into two types: a frisk search for evidence and a strip search.
83. When an officer determines that a frisk search for evidence is required, the officer will:
 - a. detain the person for the purposes of a customs search and afford that person their rights and cautions as per s.10 of the *Charter of Rights and Freedoms* as well as the right to remain silent in accordance with s.7 of the *Charter*;
 - b. contact a senior officer who will review the grounds for the frisk search for evidence and authorize the frisk search;
 - c. if the person exercises the right to contact counsel, he must be given that opportunity before the frisk search is carried out;
 - d. remove the person to a private room forthwith or ensure that the person is afforded as much privacy as possible;
 - e. advise the person that they may have the validity of this search reviewed by a senior officer and, if that senior officer does not agree that the search is valid, the senior officer may direct the release of the person;
 - f. summon a senior officer if the person requests a review.

Note: When a senior officer is not on site, a review may be conducted by a senior officer via telephone.

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- g. ensure the frisk search for evidence is to be conducted by two officers of the same sex as the person being searched, as required by ss.99.2(5) of the *Customs Act*;
- h. may require the person to remove outer layers of clothing such as overcoats, jackets, parkas or coveralls, when the person is fully clothed beneath these items, before performing the frisk search for evidence;
- i. seek authorization to conduct a strip search if contraband is detected during the search for evidence.

Strip Search

84. A strip search may be conducted pursuant to s.99.2 of the *Customs Act* and ss.5(2) of the CCA Regulations when an officer has **reasonable grounds to believe** that a person has secreted on or about his person:

- a. anything in respect of which the *Customs Act* has been or might be contravened;
- b. anything that would afford evidence with respect to a contravention of the *Customs Act*; and
- c. any goods, the importation or exportation of which is prohibited, controlled or regulated by the *Customs Act* or any other Act of Parliament.

Note: Officers must observe and be able to clearly articulate the indicators or evidence gathered that justifies that officer's belief on reasonable grounds in order to conduct a strip search of a person who is in or who is leaving a CCA.

85. In almost all instances, officers will conduct a frisk search for evidence prior to conducting a strip search. Suspicious articles detected during the frisk search for evidence may raise the officer's reasonable grounds from suspicion to belief and the officer may then seek authorization for a strip search.

If, at this stage, an officer has reasonable grounds to believe that an indictable offence has or is about to occur or that a summary or indictable offence is occurring, that officer may arrest the individual, if appropriate, before conducting the strip search. The individual should be read his rights again, including being informed of their right to silence, the reasons for their arrest and given the opportunity to contact counsel again, given the change in jeopardy to their liberty. However, an officer is not required to arrest the person before conducting a strip search.

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Note: A designation under s.163.4 of the *Customs Act* is required for a CBSA Officer who is at a customs office performing the normal duties of an officer under the *Customs Act* to arrest an individual under ss.163.5(1) of the *Customs Act* and ss.495(1) of the *Criminal Code* for a criminal offence under the *Criminal Code* or another Act of Parliament; without such a designation a CBSA Officer is limited to arresting for *Customs Act* and IRPA offences only. Refer to EN Manual Part 6, Chapter 6, Policy Guidelines

86. When an officer has determined that a strip search is required, the officer will:
- a. contact a senior officer who will review the grounds for the strip search and authorize the strip search;
 - b. detain the person (if not already under arrest or detention) and afford that person their rights and cautions as per s.10 of the *Charter of Rights and Freedoms* as well as the right to remain silent in accordance with s.7 of the *Charter*;
 - c. if rights and cautions have already been communicated, explain that the examination has advanced to include a strip search and read that person their rights again;
 - d. If the person exercises the right to contact counsel, he must be given that opportunity before the strip search is carried out;
 - e. remove the person to a private room forthwith; a strip search must be conducted in a private area
 - f. advise the person that they may have the validity of this search reviewed by a senior officer and, if that senior officer does not agree that the search is valid, the senior officer may direct the release of the person;
 - g. summon a senior officer if the person so requests a review;

Note: When a senior officer is not on site, a review may be conducted by a senior officer via telephone.
 - h. ensure that the strip search is to be conducted by two officers of the same sex as the person being searched as required by ss.99.2(5) of the *Customs Act*;
 - i. conduct the strip search as per current CBSA policy and procedures; and
 - j. release the person if contraband is not detected during the strip search

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Note: If sufficient indicators are present that may lead an officer to believe that they are dealing with an internal carrier, the officer should follow the EN Manual in regards to the policy and procedures on internal carriers, Part 6, Chapter 6.

While the search authority under s.98 of the *Customs Act* which apply to persons arriving in Canada and those about to leave Canada do permit body cavity searches (see the Supreme Court judgment in *Regina. v. Simmons*, [1988] 2 S.C.R. 495), the types of searches of persons authorized by s.5 of the CCA Regulations are limited to frisk searches and strip searches. Body cavity searches are not contemplated in the CCA regime.

Frisk Search for Officer Safety

87. Where the individual is arrested for a criminal offence or for immigration purposes under IRPA

In order to carry out a frisk search for officer safety in a CCA where an individual is arrested for a criminal offence or for immigration purposes under IRPA, the arrest itself must be lawful and the search must be reasonable in all of the circumstances.

A valid search for officer safety incidental to arrest is one which took place for a valid purpose (to discover any object that may be a threat to officer safety or that may facilitate the escape of the accused), took place in a reasonable manner and where the officer is able to articulate why the search took place.

88. Where the individual is detained but not arrested

In order to carry out a frisk search for officer safety in a CCA where an individual is detained but not arrested, a CBSA Officer must have reasonable grounds to believe that the officer's own safety or the safety of others is at risk. It must also be reasonably necessary in light of the totality of the circumstances, and can't be justified based on vague or non-existent concerns for safety or based on hunches or mere intuition.

Note: A frisk search for officer safety is a common law power not a statutory one. The threshold for a frisk for officer safety of a person detained within a CCA is "reasonable grounds to believe" as per the Supreme Court of Canada's judgement in *R. v. Mann*, 2004 SCC 52, [2004] 3 S.C.R. 59. Refer to EN Manual, Part 6, Chapter 1 for procedures on frisks for officer safety.

Hindering

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89. When a person assaults, threatens or otherwise interferes with or obstructs an officer in the performance of their duties the officer may arrest the person for hindering an officer pursuant to s.153.1 of the *Customs Act*.

Note: Refer to EN Manual, Part 9, Chapter 1.

Allegations

90. The allegation of **non-report of goods** acquired while in a CCA will be used to justify the seizure of such goods under s.110 of the *Customs Act* when a person leaving a CCA is asked by an officer to report goods acquired by that person through any means while that person was in a CCA and that person fails to report goods so acquired, regardless of the method of concealment, if any. The appropriate wording is as follows: "The said goods are seized under section 110 of the *Customs Act* because they were not reported to an officer upon request, despite having been acquired through any means while in a Customs Controlled Area, in contravention of paragraph 11.4(1)(b) of the *Customs Act*."
91. The allegation of **inaccurate information** pertaining to CCA goods will be used to justify a seizure of such goods under s.110 of the *Customs Act* when untrue statements are made with respect to answers given in response to questions asked of a person leaving a CCA (paragraph 11.4(1)(c)) or within a CCA (paragraph 11.4(2)(b)) by an officer in the performance of his or her duties. The questions relevant to this allegation relate to goods in the possession or control of such a person. As per the above provisions, such questions are required to be answered truthfully. In addition, s.7.1 requires that any information provided to an officer in the administration or enforcement of the *Customs Act* be "true, accurate and complete." Examples of relevant inaccurate information would be information relating to the description of the goods, their value, the source of the goods, and the origin of the goods. The appropriate wording is as follows: "That the said goods are seized under section 110 of the *Customs Act* because the information provided to a CBSA Officer pertaining to these goods was not true, accurate or complete in contravention of section 7.1 of the *Customs Act*."

Administrative Monetary Penalties

92. The CBSA may issue penalties to facility owner/operators/licensees under the Administrative Monetary Penalty System (AMPS) for any offences under the *Customs Act*. However, currently there are no AMPs which specifically relate to CCAs.

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ROLES AND RESPONSIBILITIES

Border Services Officers

93. BSOs are responsible for:

- a. ensuring compliance with CCA policy and procedures;
- b. notifying superintendents or CBSA management of any serious circumstances or serious incidents related to any CCAs;
- c. contacting the Intelligence Officer and submitting relevant information relating to CCAs;
- d. contacting the CBSA Investigator and submitting relevant information reports relating to CCAs;
- e. ensuring that detained or seized goods are documented and stored in accordance with CBSA policy, regulations and evidence handling procedures; and
- f. adhering to all EN manual policy and procedures.

Intelligence Officers

94. Intelligence Officers (IO) are responsible for:

- a. ensuring compliance with CCA policy and procedures;
- b. liaising with BSOs, superintendents and managers on matters that relate to CCAs;
- c. liaising with the Criminal Investigations Division and other local law enforcement agencies on CCAs and providing information that may fall under their responsibility to Criminal Investigations Division on any CCA violations if required;
- d. liaising with local facility owner/operators;
- e. liaising with private industry regarding CCAs; and
- f. providing the necessary assistance and support to BSOs.

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CBSA Investigators

95. CBSA Investigators are responsible for:

- a. ensuring compliance with CCA policy and procedures;
- b. ensuring any offence of CCA policy or procedures is dealt with accordingly;
- c. liaising with the Criminal Investigations Division and other local law enforcement agencies on CCAs and providing information that may fall under their responsibility to Criminal Investigations Division on any CCA violations if required;
- d. providing the necessary assistance and support to BSOs;
- e. conducting an investigation following an offence and laying charges if applicable; and
- f. responding to information received from an IO or BSO that indicates possible criminal action(s).

CBSA Managers and Superintendents

96. CBSA managers and superintendents are responsible for:

- a. ensuring compliance with CCA policy and procedures;
- b. ensuring any offence of CCA policy or procedures is dealt with in a timely manner;
- c. liaising with local facilities owner/operators;
- d. providing the necessary assistance and support to BSOs; and
- e. providing the Programs Branch, Border Programs Modernization Division with an accurate description of areas under their control that require designation as a CCA.

Border Programs Modernization Division

97. The Border Programs Modernization Division is responsible for:

- a. monitoring adherence to CCA policy and procedures by the regions;
- b. receiving recommendations from the regions and addressing any concerns;

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- c. developing and maintaining appropriate policy and procedures as required;
- d. supplying reports to the Minister and to the regions regarding CCAs;
- e. providing the Minister, or approved delegate, with an accurate description of areas that require CCA designation; and
- f. ensuring designations are current and modified when required.

REFERENCES

Customs Act
Customs Controlled Area Regulations
Criminal Code
Canadian Charter of Rights and Freedoms
Enforcement Manual
Immigration and Refugee Protection Act
Privacy Act
D Memorandum 2-3-7

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CHAPTER 11

**CBSA POLICY AND PROCEDURES ON THE USE OF ELECTRONIC RECORDING
DEVICES BY MEMBERS OF THE PUBLIC**

12/12/2017

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ELECTRONIC RECORDING DEVICES

POLICY STATEMENT

1. The Canada Border Services Agency (CBSA) can only restrict the use of Electronic Recording Devices (ERD) by members of the public when the ERD is used in a manner that hinders, impedes or obstructs CBSA employees from performing their duties.

DEFINITIONS

2. Please refer to Part 11 – Glossary

AUTHORITIES

Customs Act

3. Section 153.1 – *Hindering an officer* - No person shall, physically or otherwise, attempt to do any of the following:
 - (a) interfere with or molest an officer doing anything that the officer is authorized to do under this Act; or
 - (b) hinder or prevent an officer from doing anything that the officer is authorized to do under this Act.
4. Subsection 99(1) - *Examination of Goods* - An officer may:
 - (a) at any time up to the time of release, examine any goods that have been imported and open or cause to be opened any package or container of imported goods and take samples of imported goods in reasonable amounts.
5. Section 163.5 – *Powers of designated officers* - In addition to the powers conferred on an officer for the enforcement of this Act, a designated officer who is at a customs office and is performing the normal duties of an officer or is acting in accordance with section 99.1 has, in relation to a criminal offence under any other Act of Parliament, the powers and obligations of a peace officer under sections 495 to 497 of the Criminal Code, and subsections 495(3) and 497(3) of that Act apply to the designated officer as if he or she were a peace officer.

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Immigration and Refugee Protection Act

6. Subsection 129(1) - *Offences relating to officers* - Every person is guilty of an offence who:
 - (b) obstructs or impedes an officer in the performance of the officer's duties under this Act.
7. Subsection 139(1) – *Search* - An officer may search any person seeking to come into Canada and may search their luggage and personal effects and the means of transportation that conveyed the person to Canada if the officer believes on reasonable grounds that the person
 - (a) has not revealed their identity or has hidden on or about their person documents that are relevant to their admissibility; or
 - (b) has committed, or possesses documents that may be used in the commission of, an offence referred to in section 117, 118 or 122.
8. Subsection 15(3) – *Inspection* - An officer may board and inspect any means of transportation bringing persons to Canada, examine any person carried by that means of transportation and any record or document respecting that person, seize and remove the record or document to obtain copies or extracts and hold the means of transportation until the inspection and examination are completed.
9. Subsection 16(3) – *Evidence relating to identity* - An officer may require or obtain from a permanent resident or a foreign national who is arrested, detained, subject to an examination or subject to removal order, any evidence – photographic, fingerprint or otherwise – that may be used to establish their identity or compliance with this Act.

Criminal Code

10. Section 129 – *Offences relating to public or peace officers* – Everyone who:
 - (a) resists or wilfully obstructs a public officer in the execution of his duty or any person lawfully acting in aid of such an officer; or
 - (c) resists or wilfully obstructs any person in the lawful execution of a process against lands or goods or in making a lawful distress or seizure.

PURPOSE AND SCOPE

11. The purpose of this document is to provide guidelines for CBSA officers regarding the use of ERDs by the public during CBSA operations.
12. This policy applies to all CBSA officers engaged in CBSA operations at primary and secondary inspection areas, CBSA inland offices and interview rooms, and

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any other public place where an officer may perform their duties under the CA, IRPA, or any other Act of Parliament.

13. This policy does not apply to CBSA detention cells as this is an area normally not accessible to the general public. This policy does not apply to hearings being conducted by the Immigration and Refugee Board (IRB) as both the hearings officers, applicants and the public are subject to the IRB's rules. If the hearings officer believes that the foreign national, permanent resident or member of the public should not record or film the hearing, a request should be submitted to the IRB member conducting the hearing.

BACKGROUND

14. Many CBSA activities occur at POEs or in public spaces, or areas where the public circulates freely with uncontrolled access to any personal devices they are carrying with them. CBSA officers have raised concerns with respect to travellers using these devices as ERDs with the express intention of recording images or activities of CBSA officers.

POLICY GUIDELINES

Limited Authority to Restrict Use Where the Use of the ERD Impedes, Obstructs or Hinders:

At a Port of Entry (POE):

15. Where the use of an ERD by a member of the public obstructs a CBSA officer's ability to perform his/her duties, section 153.1 of the *Customs Act* or paragraph 129(1)(d) of the *Immigration and Refugee Protection Act* (IRPA), or section 129 of the *Criminal Code* may be applicable if it can be justified that the use of the ERD hinders, obstructs or impedes the officer.
16. Where a designated officer is performing his/her normal duties at a customs office or acting in accordance with section 99.1 of the *Customs Act*, the officer can also utilize the authorities under section 163.5 of the *Customs Act* to arrest for the offence of obstruction described in section 129 of the *Criminal Code*.

Enforcement & Intelligence Officer Authorities:

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17. Enforcement & Intelligence (E&I) officers, where they are designated under subsection 138(1) of the *Immigration and Refugee Protection Act* (IRPA) or are performing any duty in the administration or enforcement of the *Customs Act* (CA), are peace officers for the purposes of carrying out their duties in the administration and enforcement of the IRPA and/or the CA. They do not have the authority under section 495 of the *Criminal Code* (CC) to arrest for any CC offences.
18. Where the use of an ERD by a member of the public obstructs an E&I officer's ability to perform his/her duties under the CA or the IRPA, that officer may exercise his/her authority under section 495 of the CC to arrest that person for the offence of hindering under section 153.1 of the CA or for the offence of obstructing or impeding under paragraph 129(1)(d) of the IRPA, as the case may be.
19. When an E&I officer makes an arrest for an offence under paragraph 129(1)(d) of the IRPA or section 153.1 of the CA, it is imperative that the person arrested is informed of the reason for their arrest, cautioned regarding their right to silence and informed of their right to counsel, and afforded such rights, as required by the *Canadian Charter of Rights and Freedoms*. CBSA Criminal Investigations is responsible for investigating and laying charges for offences under the IRPA and the CA and should be notified without delay. If a CC offence has occurred, officers shall consider calling the police of jurisdiction so they may investigate.

Authority to inspect an ERD during a Port of Entry examination:

20. Where a request is made to examine an ERD as part of an examination of goods at a POE pursuant to the CA, or as part of an admissibility and identity related examination pursuant to IRPA, it is a lawful request and the CBSA officer would have the authority to examine the ERD.
21. Where an officer believes, based on reasonable grounds, that an individual seeking to enter Canada has not revealed their identity or has hidden, on or about their person, documents that are relevant to their admissibility, or has committed an offence, or possesses documents that may be used in the commission of an offence under IRPA, the officer may search the luggage and personal effects (including any ERDs) and the means of transportation that conveyed that person to Canada, under subsection 139(1) of IRPA.
22. This authority may also be exercised during examinations conducted pursuant to subsection 15(3) of IRPA. However, as required under subsection 139(1), the officer must have reasonable grounds to believe that the person has records relevant to their admissibility and/or identity on their person.

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23. CBSA officers should operate on the presumption that their actions are being monitored and recorded when interacting with members of the public.
24. A CBSA officer must have the appropriate legal authority in order to restrict the public's use of ERDs.
25. The examination of an ERD is justified if it is done in the context of exercising an officer's authority pursuant to subsection 99(1)(a) of the CA. Guidelines and policies for examinations conducted under that authority are expanded upon in Operational Bulletin [PRG-2015-31](#). The authorities and limitations on ERD searches conducted strictly under IRPA are limited and described in that Act.
26. Unreasonable search and seizure: includes erasing or deleting any files, pictures or other items from a person's ERD, or removing, altering or causing to be altered any associated memory cards or batteries.
27. The examination of an ERD is not to be triggered solely by the use of that ERD by the individual. It should only be part of the normal examination either under the CA or IRPA. As such, that examination should not extend to restricting the use of the ERD unless the device is being detained or seized.
28. The use of an ERD may only be restricted where it hinders, impedes or obstructs an officer in the lawful performance of their duties in accordance with section 153.1 of the CA, paragraph 129(1)(d) of IRPA, or pursuant to section 129 of the CC.
29. Hindering may be described as a situation where a member of the travelling public, physically or otherwise, interferes with or prevents an officer from carrying out their authorized duties. This may result in delay or obstruction which adversely affects an operation, or directly interferes with other travellers. While sometimes unpleasant to deal with, clients who are rude, insulting or slightly uncooperative are not automatically deemed to be "hindering an officer" in this context.
30. If a CBSA officer is being recorded by a member of the public, provided that they are not being hindered or obstructed in the performance of their duties, the CBSA officer should continue with their duties.
31. If a member of the public is using their ERD to record a CBSA officer, and he/she does not want to be recorded, the officer can request that the member of the public cease to use the ERD. If the CBSA officer, however, is not hindered, impeded or obstructed from performing their duties, the officer does not have the authority to enforce the request if the member of the public continues to use their ERD.
32. Officers should be mindful of the [Incident Management Intervention Model](#) when attempting to defuse any situation, and undertake further actions/reporting and utilize dispute resolution mechanisms as per normal protocol.

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33. Policies are in place for dealing with situations where the officer believes their health and safety has been compromised due to the recording and posting on the internet of their interaction with a member of the public. The CBSA is committed to protecting, supporting and assisting its employees and their families where there has been any act of abuse, threat, stalking and/or assault directed against them or their property in the performance of their duties or as a direct result of the performance of their duties.
34. For all information dealing with threats to employees and how to report these incidents, please refer to the Comptrollership Manual – Security Volume – Policy on Abuse, Threats, Stalking and Assaults Against Employees and the Comptrollership Manual – Guidelines on Abuse, Threats, Stalking and Assaults Against Employees.

REFERENCES

35. Customs Act
36. Immigration Refugee Protection Act

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Chapter 11

**CBSA POLICY AND PROCEDURES ON THE USE OF ELECTRONIC RECORDING
DEVICES BY MEMBERS OF THE PUBLIC**

Appendix A

**Q's AND A's ON THE USE OF ELECTRONIC RECORDING DEVICES BY MEMBERS
OF THE PUBLIC**

12/12/2017

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ELECTRONIC RECORDING DEVICES

Q's AND A's ON THE USE OF ELECTRONIC RECORDING DEVICES BY MEMBERS OF THE PUBLIC

QUESTION 1:

What are examples of different electronic recording devices (ERD)?

ANSWER:

ERDs are instruments that have the ability to record audio and/or video. They include but are not limited to cellular phones, laptops, digital or video cameras, smart phones, and tablet computers.

QUESTION 2:

Why did the CBSA develop a policy on the use of electronic recording devices by members of the public during CBSA operations? Wasn't there a policy already in place?

ANSWER:

The policy is new; however, it is clarifying the existing law. The CBSA has never had legal authority to restrict the use of ERDs by members of the public during CBSA operations except in cases where the use of the ERD is hindering, impeding or obstructing the CBSA officer's ability to perform their duty. The policy was developed to provide guidance to the field on CBSA's legal authorities and in response to an increasing number of instances where CBSA officers are being recorded by members of the public during CBSA operations.

QUESTION 3:

What if a member of the public records an officer during CBSA operations and uploads the recording to the internet? Is there anything that the officer can do to prevent this from happening or have the video removed?

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ANSWER:

The CBSA's ability to prevent a recording from being posted on the internet, or having it removed, is limited. If posting the recorded image on the internet causes harm to the CBSA employee's personal security or reputation, the CBSA employee would then need to make an application to the court to have the posting removed. Any harm caused by the posting of the recording on the internet would have to be proven and the resolution would be decided by the court.

There are, however, mechanisms in place for dealing with situations where the officer feels their health and safety has been compromised due to the recording and posting on the internet of their interaction with a member of the public. All cases of abuse, threats, stalking and assaults must be reported to the police with or without the employee's consent, as the threat may impact on the safety of other employees and their families. As soon as possible after an incident, the manager must notify the director and the Regional or Headquarters Security Office. The manager will also advise any other person specified by local administrative procedures.

For all information dealing with threats to employees, CBSA employees should refer to the Comptrollership Manual – Security Volume: Policy Abuse, Threats, Stalking and Assaults Against Employees and the Comptrollership Manual – Security Volume: Guidelines for Abuse, Threats, Stalking and Assaults Against Employees.

It should be noted that CBSA offers support to employees and their family members who have been the target of abuse, threats, stalking and/or assaults. This support is available in many forms, including access to legal services, reimbursement of approved financial costs and/or material damages, counselling and other services. Each case is assessed on its own merit. Local Human Resources advisors should be contacted for details on the support available and for procedures to be followed in order to obtain it.

QUESTION 4:

Is a CBSA officer permitted to examine an ERD during the course of their interview with a member of the public? What legislative authority applies to this type of examination?

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ANSWER:

Officers may decide to examine an ERD during the course of their duties; however, such examinations would not fall under the scope of this policy.

When an examination is conducted pursuant to subsection 99(1)(a) of the *Customs Act*, Border services officers should rely on the guidance and policies as set out in Operational Bulletin [PRG-2015-31](#).

Immigration related examinations may be conducted pursuant to subsection 139(1) of the *Immigration Refugee and Protection Act* (IRPA). Such cases would include individuals seeking entry to Canada that have not revealed their identity or have hidden on or about their person documents that are relevant to their admissibility, or have committed, or possess documents that may be used in the commission of an IRPA offence.

QUESTION 5:

Is a CBSA officer permitted to erase any interaction between themselves and a member of the public in a situation where the member of the travelling public has been detained or arrested for hindering, impeding, or obstructing the border services officer from performing their duties?

ANSWER:

Under no circumstances should a border services officer erase the contents found on a member of the public's ERD.

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**CBSA POLICY AND PROCEDURES ON THE USE OF ELECTRONIC RECORDING
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Appendix B

**THE USE OF ELECTRONIC RECORDING DEVICES BY MEMBERS OF THE PUBLIC
SCENARIOS**

12/12/2017

THE USE OF ELECTRONIC RECORDING DEVICES BY MEMBERS OF THE PUBLIC

SCENARIOS

Scenario 1 – Primary

A CBSA employee is being recorded by Traveller A during the course of Traveller A's primary interview. Traveller A is responding to all of the CBSA employee's questions.

Response

If the CBSA employee prefers not to be recorded, they may politely request that Traveller A cease recording. If Traveller A states they would prefer to continue recording, and the CBSA employee is not being hindered or obstructed in the performance of their duties, the officer should continue Traveller A's interview.

Scenario 2 – Primary

A CBSA employee is being recorded by Traveller A during the course of Traveller A's primary interview. Traveller A refuses to answer the CBSA employee's questions but continues to record the employee.

Response

The CBSA employee should ask Traveller A to stop recording. If Traveller A refuses to stop the recording, the CBSA employee will explain to Traveller A that they require their full attention in order to conduct a proper interview. If Traveller A continues with the recording, and does not answer the primary questions, the CBSA employee will refer Traveller A to secondary as point of finality cannot be established.

Scenario 3 –Any location at a port of entry

Traveller A is undergoing an interview and/or examination of their goods by a CBSA employee in secondary and is being recorded by Traveller B. Traveller A objects to being recorded by Traveller B, becomes irritated and is non-responsive to the CBSA employee's questions.

Response

The CBSA employee should make every effort to ensure that the interview and/or examination is being conducted in a manner that respects the traveller's right to privacy. The CBSA employee may ask Traveller B to stop recording. If Traveller B does not comply with the request to stop recording, the CBSA employee may proceed with the arrest and detention of Traveller B provided that, in the view of the CBSA employee, Traveller B is hindering, obstructing or impeding the continuation of the interview or examination. As with any arrest for hindering, obstructing or impeding, the officer will make every attempt to obtain compliance through verbal intervention, including explaining the consequences of non-compliance, before resorting to arrest. The CBSA officer will follow procedures as outlined in the CBSA Enforcement Manual – Part 6, Chapter 1, Arrest and Detention. The CBSA employee must be able to establish, through evidence, that they were hindered, obstructed or impeded from performing their duties. CBSA Criminal Investigations is responsible for investigating and laying charges for offences under the IRPA and the CA.

An arrest is never automatic and, if feasible, the CBSA employee may consider other options. This may include processing Traveller B and having Traveller A wait to the side or, alternatively, the CBSA employee may move the examination/interview with Traveller A to an area where Traveller B would not have access, thus limiting the ability for Traveller B to observe the interview/examination.

This scenario applies to all travellers over the age of 12. In a scenario where a child between the age of 12 and 18 is detained and/or arrested the CBSA officer shall follow procedures as outlined in the CBSA Enforcement Manual – Part 6, Chapter 3, Searches and Enforcement Actions - Persons. Officers will not arrest a person under the age of 12, as they cannot be convicted of an offence.

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Scenario 4 – CBSA POE or other CBSA facility (ex. designated reporting site, longroom)

An individual who is not interacting with the CBSA (i.e., already processed traveller, member of the public, airport employee, etc.) records activity in an area where CBSA employees are conducting their duties.

Response

If the individual has no reason to be in the area, the CBSA employee may request that the individual leave the area. If the individual refuses to leave, the CBSA employee may contact the applicable security or local police, as required.

Scenario 5 – Secondary

During a secondary examination Traveller A is filming the CBSA employee while they examine Traveller A's goods. In the process of conducting a progressive examination, the CBSA employee decides to examine the electronic recording device.

Response

Officers may request to examine an ERD during the course of their duties; however, such examinations would not fall under the scope of this policy. In this case, as the examination would be conducted pursuant to paragraph 99(1)(a) of the *Customs Act*, Border services officers should rely on the guidance and policies as set out in Operational Bulletin [PRG-2015-31](#).

Unlike examinations under the *Customs Act*, searches under the *Immigration and Refugee Protection Act* (IRPA) require a threshold of belief. CBSA officers require reasonable grounds to believe pursuant to subsection 139(1) of IRPA in order to search the luggage and personal effects (including an ERD) belonging to an individual. Such cases would include individuals seeking entry to Canada that have not revealed their identity or have hidden on or about their person documents that are relevant to their admissibility, or have committed an offence, or possess documents that may be used in the commission of an IRPA offence.

It must be noted that border services officers are never permitted to erase the contents found on a member of the public's ERD, including instances where the traveller has

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been detained or arrested for hindering, impeding, or obstructing the border services officer from performing their duties.

Scenario 6 – Any location outside an inland CBSA office

During an investigation into an IRPA inadmissibility that takes place in a dwelling house or a public space, the individual is filming the CBSA officer while they ask questions relating to an IRPA inadmissibility.

Response

The CBSA officer may ask the individual to stop the recording. If the individual states that they would prefer to continue recording and the CBSA officer is not being hindered or obstructed in the performance of their duties, he/she should continue with the investigation/interview. If the individual stops answering the CBSA officer's questions, the CBSA officer will determine the best course of action.

Scenario 7 – Immigration and Refugee Board Hearing

An individual is recording the CBSA hearing officer inside the hearings room.

Response

The ERD policy does not apply to hearings being conducted by the Immigration and Refugee Board (IRB), as both the hearings officers and applicants are subject to the IRB's rules. If the hearings officer believes that the foreign national or permanent resident should not record or film the hearing, a request should be submitted to the IRB member conducting the hearing.

Scenario 8 – CBSA inland office interview room

A CBSA employee is being recorded by an individual during the course of that individual's interview at a CBSA inland office. The individual is responding to all of the CBSA employee's questions.

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Response

If the CBSA employee prefers not to be recorded, they may politely request that the individual cease recording. If the individual states that they would prefer to continue recording and the CBSA employee is not being hindered or obstructed in the performance of their duties, the CBSA employee should continue with the individual's interview.

Scenario 9 – Any location where CBSA employees are engaged in activities

A member of the public records a CBSA employee during CBSA operations and uploads the recording to the internet.

Response

The posting of these recordings cannot be prevented by the CBSA. However, if the publicizing of the recorded image causes harm to the CBSA employee's personal security or reputation they may have recourse through civil litigation. Any harm caused by the posting of the recording on the internet would have to be proven in court before a judge by the CBSA employee alleging violation of his/her personal security or reputation. The resolution would then be decided by the court.

Policies are in place for dealing with situations where the officer believes their health and safety has been compromised due to the recording and posting on the internet of their interaction with a member of the public.

For all information dealing with threats to employees, CBSA employees should refer to the Comptrollership Manual – Security Volume – Chapter 26: Abuse, Threats, Stalking and Assaults Against Employees and the Comptrollership Manual – Chapter 15: Reporting of Security Incidents.

Note

In all situations where the CBSA employees are dealing with members of the public, the employees shall use their training and, when necessary, request the guidance and assistance of their supervisor(s) in an effort to defuse the situation.

CUSTOMS ENFORCEMENT MANUAL

Part 7

CUSTOMS ENFORCEMENT SYSTEMS, INFORMATION AND INTELLIGENCE

Chapter 1

INTEGRATED CUSTOMS ENFORCEMENT SYSTEM (ICES) POLICY

30/05/04

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Integrated Customs Enforcement System

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to capture and monitor enforcement information on the Integrated Customs Enforcement System (ICES).

DEFINITIONS

2. Refer to Part 11 - Glossary.

AUTHORITIES

Privacy Act

3. Section 4 – Limits the collection of personal information to that directly related to an operating program or activity of an institution.
4. Section 6 – Requires a retention period for personal information collected.

Note: Regulations for customs purposes require at least a two-year retention period.
5. Section 7 – Limits the use of information to the purposes for which it was collected.
6. Section 8 – Limits the disclosure of information but provides for disclosure to an investigative body.

Customs Act

7. Section 107 – Allows for the provision to others, access to others, and use of customs information that is gathered in the administration or enforcement of the *Customs Act* or the *Customs Tariff* or is prepared from such information.
8. Section 160 – States that unauthorized disclosure of customs information is a punishable offence.

BACKGROUND

9. The CBSA is committed to enhancing border protection and providing improved services through automated support. This is accomplished in part through the electronic management of enforcement information and through effective tools to conduct risk analysis, selective targeting, and other enforcement activities. The primary customs tool for the capture and management of enforcement information is ICES.
10. ICES is a comprehensive windows-based software application designed to provide a single interface for the capture, reporting, analysis, and query of enforcement data. Using CBSA's data communication network, ICES has the capability to record, store, and distribute enforcement data on a 24-hour basis throughout the country.
11. The ICES database contains all customs seizures, lookouts, export control activities, search and arrest activities, and selected Citizenship and Immigration Canada (CIC), Field Operational Support System (FOSS) records available for query and retrieval. The system is made up of four main components: Enforcement Action Data Capture, Lookouts, Enforcement Analysis, and Enforcement Program Monitoring.

PURPOSE AND SCOPE

12. The purpose of this policy is to provide guidelines for the utilization and maintenance of ICES.
13. This policy applies to all CBSA employees whose position requires them to use ICES or information from the ICES database.

POLICY GUIDELINES

User Access

14. Access to the functions of ICES will be controlled by a user profile.

Note: User profiles that restrict access to specific functions are based on users' work positions, and the principle of "need to know." The standard profiles are outlined on the ICES User Information and Access Authorization form (See Appendix A). A listing of the restrictions for each profile is available through the ICES Maintenance Unit at Headquarters.

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Integrated Customs Enforcement System

15. Exceptions to standard profiles may be obtained on an as-required basis where a strong business case exists.
16. Customs Contraband, Intelligence and Investigations (CCII) must approve requests for specialized or non-standard profiles.
17. All potential users must fully complete an ICES User Information and Access Authorization form and forward it to the ICES Maintenance Unit at Headquarters.

Note: The ICES Maintenance Unit will assign the user an appropriate user profile and activate the user.

Note: See Appendix A for a copy of the ICES User Information and Access Authorization form.

18. All users must have a CBSA issued LAN account (user ID) before they are activated in ICES.

Note: The account is obtained by completing the Computer Information Access Authority form (TF469) (See Appendix B), and submitting it to the users' local security services official or local access administrator identified in the users' area.

19. Users may not, under any circumstances, share their password or user ID with other users or persons.
20. ICES users are responsible for all transactions completed using their user ID and password.

Note: ICES has the ability to audit all transactions and show the relationship between the user, terminal, and data. The owner of the user ID is liable for any misuse or compromise of the system and data contained in its databases.

21. The minimum-security level for access to ICES is enhanced reliability.
22. In order to capture all customs seizures, it is a system requirement that all customs officers in Canada will have a user ID and profile in the ICES system, whether their work location has an ICES terminal or not.
23. Manually completed enforcement documents from non-ICES sites will be forwarded to CCII for input into ICES under the completing officers' user ID.

User Profile Maintenance

24. The ICES Maintenance Unit is responsible for all user maintenance for ICES and this responsibility may not be delegated.
25. The ICES Maintenance Unit is to be notified as soon as possible of any changes due to transfer, promotion, change in duties, or termination of employment of recognized system users.

Note: The responsibility for this notification will rest with the local or regional information technology services, which must be informed by the supervisor of the person affected.

System Security

26. The ICES system and the data contained therein are designated "Protected".
27. ICES workstations located at the ports of entry will normally be accessed in secondary referral areas and not at the PIL. In exigent circumstances, where operational requirements deem it necessary, ICES access at PIL can be authorized by the Headquarters OPI (Information Management, Enforcement Branch) for access to commercial conveyance information only.
28. ICES terminals and printers will be positioned to prevent viewing of data by unauthorized individuals.
29. All ICES users will log off the system at the end of their session and clear any printed matter from any associated printer.
30. All printed matter will be stored and used in a manner preventing access by unauthorized personnel.
31. All printed matter will be destroyed in accordance with government policy.

Note: Refer to the Financial and Administration Security Volume, Chapter 8, Disposal of Sensitive Information and Assets for further information on how to destroy printed matter.

32. Users may access data only in the manner authorized for the performance of their duties.
33. Any use of the system or system data for unethical, illegal, or inappropriate purposes is strictly prohibited and may be cause for disciplinary action up to

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Integrated Customs Enforcement System

termination of employment and criminal prosecution. Examples of inappropriate use include, but are not limited to:

- a) unauthorized use of a user ID and password;
 - b) accessing the system for personal gain;
 - c) accessing the system data for the benefit of the user or another person;
 - d) disclosing information contained on the system to unauthorized persons;
and
 - e) intentionally interfering with the normal operation of the system.
34. Breaches of established ICES procedures and policy violations must be reported to the Head, CCII. All policy violations will be investigated and the necessary corrective and/or disciplinary action taken.
 35. Under no circumstances will ICES information be divulged to travellers. Travellers requesting ICES information will be advised to make an inquiry in accordance with the *Access to Information Act* and the *Privacy Act*.
 36. ICES enforcement records will remain in the ICES system for six years. Intelligence information may remain in the ICES system up to ten years.
 37. Standards for system security of ICES including physical security, data security, and site maintenance will be those required under the Treasury Board Information and Administrative Security Manual, the Government of Canada's Technical Security Standard for Information Technology and Security Bulletins, CBSA security standards, and related administrative management policies.
 38. The regions will conduct security reviews on an ad hoc basis but no less than twice annually. Each review will be documented and copies of the findings will be forwarded to the Head, CCII, the Regional Security Officer, and divisional management.
 39. All instances of a lost or stolen laptop containing remote access to ICES must be reported to the Security Directorate and the Head, CCII immediately.

Enforcement Action Process

40. All enforcement actions at automated locations will be completed using ICES, except when technical reasons prevent the use of the system.

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41. All enforcement actions that for technical reasons are not entered into ICES at the time of action will be completed on form K19S, Seizure Receipt (Travellers), K19C (Currency) or on form K19, Seizure Receipt (Commercial). A hardcopy of the manual enforcement action will be forwarded to the Database Section, CCII for input into ICES.

Note: Refer to Part Eight, Chapter Two, Enforcement Forms Policy and Procedures for a sample of forms K19S and K19.

42. To the extent possible, all data fields will be fully completed at the time of enforcement action.

Note: It is the responsibility of each user to ensure the accuracy of the data being input. Once the enforcement action is completed and the client has been given a receipt, the enforcement action is final and an amended receipt will not be issued.

43. All data fields that cannot be completed at the time of an enforcement action will be completed no later than the fourth shift after the occurrence.

44. All seizure actions are to be reviewed by a superintendent within five working days after seizure reports are completed to ensure that no errors have been made, that narrative reports accurately reflect the occurrences, and that all documentation is included in the seizure package. All review results will be documented in the "Seizure Review" facility in ICES.

Note: There is an exception for all Strategic Export related seizure actions. It is the responsibility of the Counter Proliferation Section to close all strategic export related seizures. Once an officer has input the seizure it will remain in the Pending File until the Counter Proliferation Section at HQ has reviewed and closed the enforcement action.

45. ICES will allow minor changes to some data that does not affect the allegations or terms of release after a seizure is completed, but will not allow the addition or deletion of data.
46. It is the responsibility of the seizing port to advise the appropriate office (includes regional Intelligence and Contraband) immediately of changes to drug seizures (i.e., drug type, quantity, unit of measure, origin) to allow for the amendment of the information through the "Drug Update" facility in ICES.
47. Any problems or errors that may come to light after issuance of a K19 seizure receipt must be dealt with in accordance to the policy set out for corrections in Part 5, Chapter 1, Commercial Seizures, Ascertained

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Forfeitures and Administrative Monetary Penalties and Chapter 2, Traveller Seizure and Ascertained Forfeitures.

Lookout Process

48. ICES is the official lookout database for customs. All Agency lookouts will be entered into ICES and can be queried by all users.

Note: See Appendix C for details on the Classification of Lookouts and the Use of Cautions in ICES.

49. National Security and Intelligence type lookouts will be entered into ICES for a specific period, not exceeding 90 days. Users with the appropriate profile may further extend a lookout or cancel it depending on operational requirements.
50. Watch for/target type lookouts issued by customs officers expire after seven days unless authorized by a Regional Intelligence Officer (RIO) or officer having authorizing authority to remain in the system for a specified time period.
51. Once a lookout is authorized, only those with authorizing authority can modify, extend, cancel, or archive a lookout.
52. ICES forwards all details of lookouts issued by a customs officer immediately to the appropriate Regional Intelligence Officer for authorization, follow-up, or further action.
53. In the event that ICES is not available at a location due to technical reasons, all intelligence and watch for/target type lookout will be input into the local PIL automated system.
54. In accordance with the national lookout policy, whenever the subject of a lookout is encountered, all details of the examination or activity will be communicated to the authorizer of the lookout. This may be done by entering the observations into the ICES Examination Results/Notepad Window facility or by completing a manual form K28 in cases where a non-automated port is involved.

System Management

55. In consultation with CCII, the ICES Operational Maintenance and Support unit, Distributed Systems, Customs Program Strategy and Major Projects will monitor ICES use and effectiveness on a national basis, maintain the systems operations, and develop and implement upgrades to the system.

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56. The addition of uncertified software and use of an ICES workstation for other applications must be approved by the Head, CCII. Requests to add software, or upgrade or acquire additional ICES workstations must be made in writing to the Head, CCII.
57. Prior to ICES being loaded remotely, a request must be made to the local information technology section who will provide the forms that must be completed to obtain remote access.

ROLES AND RESPONSIBILITIES

Customs Contraband, Intelligence and Investigations

58. Customs Contraband, Intelligence and Investigations (CCII) is responsible for:
 - a) developing, modifying, and approving all policies related to the use of ICES, user access, its data banks, files and records, and outside system interfaces;
 - b) approving additional system functionality and expansion, including expansion of the system outside of customs;
 - c) ensuring that processes and policies of other directorates, divisions, agencies, and departments are adhered to in the development, implementation, and operation of ICES;
 - d) in consultation with the Operations Branch, creating and modifying the previous offender categories by establishing probability rates on a national basis, and setting the duration an offender remains in a given category; and
 - e) inputting all manual seizures into ICES and making authorized changes to completed seizure data.

Regional Director Generals

59. Regional Director Generals are responsible for:
 - a) ensuring that the policies and procedures relative to the site operation and use of ICES in their region are adhered to;
 - b) conducting periodic security reviews of ICES in the region;

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- c) investigating and reporting all instances of ICES policy and security breaches to CCII; and
- d) taking appropriate corrective action on policy and security breaches.

Security Directorate

60. Security Directorate is responsible for:

- a) advising the Head, CCII of operational and policy matters related to the security of ICES and its data; and
- b) investigating security breaches pertaining to ICES and reporting the results to the Regional Director General and the Head, CCII.

Customs Program Strategy and Major Projects

61. Customs Program Strategy and Major Projects is responsible for:

- a) ongoing maintenance and support of the ICES system operations;
- b) reporting system anomalies to CCII periodically;
- c) developing and implementing upgrades to the system; and
- d) monitoring system use and effectiveness on a national basis.

Adjudications Division

62. Adjudications Division is responsible for recording seizure appeal decisions on ICES.

PROCEDURES

63. Refer to the ICES User Reference Manual for detailed procedures.

REFERENCES

64. *Customs Act*
Access to Information Act
Privacy Act
Criminal Code
Government of Canada Technical Security Standards for Information Technology
Revenue Canada Information Technology Security Policy and Security Bulletins
Treasury Board Information and Administrative Management Security Manual
ICES User Reference Manual
ICES Reporting Sub-System Reference Manual
Memoranda of Understanding with U.S. Customs, Citizenship and Immigration Canada, Agriculture and Agri-Food Canada, and PIRS
CPIC Reference Manual
PIRS Reference Manual
D-Memoranda

Part 7

CUSTOMS ENFORCEMENT SYSTEMS, INFORMATION, AND INTELLIGENCE

Chapter 1

INTEGRATED CUSTOMS ENFORCEMENT SYSTEM (ICES) POLICY

Appendix A

ICES USER INFORMATION AND ACCESS AUTHORITY FORM

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APPENDIX A

ICES / SIED

Integrated Customs Enforcement System - Système intégré d'exécution des douanes

User Information and Access Authorization

This form is designed for use in the initial set-up of ICES users and will be replaced by form TF 469, Computer Information Access Authority, for ongoing maintenance.

Autorisation d'accès et renseignements sur les utilisateurs

Ce formulaire est conçu pour établir la liste initiale des utilisateurs du SIED et sera remplacé par le formulaire TF 469, Autorisation d'accès aux renseignements informatiques, pour l'entretien permanent.

Employee Information/Information sur l'employé

New User/Nouvel utilisateur	Modification/Modification	Deletion/Suppression
Surname/Nom	Given Name(s)/Prénom(s)	PRI/CIDP
Logon ID/Code d'identification	Language/Langue	Badge No./No d'insigne
		Stamp No./No d'estampille

Location/Endroit

Region/Région	District/District	Work Location/Lieu de travail
---------------	-------------------	-------------------------------

Profile/Profil

Position/Poste	Start Date/Date d'entrée en fonction	End Date/Date de cessation d'emploi
----------------	--------------------------------------	-------------------------------------

Choose position from list / Choisissez le poste qui vous intéresse

- Customs Inspector / Inspecteur des douanes
- Senior Customs Inspector / Inspecteur principal des douanes
- Customs Inspector-Part Time / Inspecteur des douanes - temps partiel
- Customs Inspector-Summer / Student Inspecteur des douanes - Étudiant (été)
- Superintendent / Surintendant
- Manager-Local / Gestionnaire - bureau local
- Manager-District / Gestionnaire - bureau de district
- Export Control Officer-HQ/Agent de contrôle des exportations-AC
- Manager - Export Control Command Centre-HQ/Gestionnaire - Centre de contrôle des exportations-AC
- Program Services/Agent des services aux programmes

- Superintendent I&I/Surintendant DRR
- Regional Intelligence Officer / Agent régional du renseignement
- Investigator-Regional / Enquêteur régional
- Regional Intelligence Analyst / Analyste régional du renseignement - AC
- Senior Intelligence Officer-HQ / Agent principal du renseignement - AC
- Senior Investigator-HQ / Enquêteur principal - AC
- Senior Intelligence Analyst-HQ / Analyste principal du renseignement - AC
- Adjudicator-HQ / Arbitre - AC
- Clerical Support-I&C / Commis de soutien - Renseignement et répression de la contrebande
- Trade Administration Services/Services d'administration des politiques commerciales

- Manager I&C / Gestionnaire de la Division du renseignement et de la répression de la contrebande
- Manager Investigations / Gestionnaire des enquêtes
- Manager Adjudications / Gestionnaire de l'arbitrage
- Manager Contraband & Intelligence Services Directorate-HQ/Gestionnaire de la direction de la contrebande et des services de renseignement
- Clerical Support-Adjudications / Commis de soutien - Arbitrage
- Clerical Support-Investigations / Commis de soutien - Enquêtes
- Targeter/Cibleur
- Tax Investigator/Enquêteur de l'impôt

This is to acknowledge that I will be granted access to the Integrated Customs Enforcement System, ICES. I will access the system as soon as possible and change my password and will restrict my use of the system to job related purposes only. I have read the above information.

La présente vise à reconnaître que j'aurai l'autorisation d'accéder au Système intégré d'exécution des douanes (SIED). J'y accéderai dès que possible, changerai mon mot de passe et utiliserai le système uniquement dans le cadre de mon travail. J'ai pris connaissance de ce qui précède.

Employee's Signature/Signature de l'employé

Supervisor's Signature/Signature du superviseur	Date/Date
---	-----------

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Appendix B


COMPUTER INFORMATION ACCESS AUTHORITY (TF469)

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APPENDIX B

	Canada Customs and Revenue Agency Agence des douanes et du revenu du Canada COMPUTER INFORMATION ACCESS AUTHORITY	AUTORISATION D'ACCÈS AUX RENSEIGNEMENTS INFORMATIQUES TF 469 Rev. 04
<p>• This form is to be completed for requesting initial user system access to Revenue Canada computer systems or when a Logon-ID is to be deleted.</p> <p>• Cette formule doit être remplie pour une première demande d'accès aux systèmes informatiques de Revenu Canada ou lorsqu'un code d'identification doit être supprimé.</p>		A zero "0" has been added to accommodate computer systems requiring 9 digits. Un zéro «0» est ajouté pour compléter la séquence de 9 chiffres selon les exigences des systèmes informatiques.
EMPLOYEE - EMPLOYÉ(E)		
Surname (in full) - Nom (au complet)	Given Name (in full) - Prénom (au complet)	Personal Record Identifier (PRI) Code d'identification de dossier personnel (CDP)
Work Location/Section (3 digit number for Taxation - 4 digit number for Customs and Excise) Lieu ou section de travail (triple : numéro de 3 chiffres - Douanes et Accise : numéro de 4 chiffres)		Current Office Location - Endroit actuel du bureau
<div style="display: flex;"> <div style="width: 50%;"> <p>ACCESS AUTHORIZATION</p> <p>The completion of your normal work duties requires that you have access to "Protected" information, files and restricted on-line facilities. In order for you to access these password-protected facilities you will be issued a Logon-ID and password. They are assigned to you and are to be used by you for official use only. You should memorize your password, and you are cautioned not to disclose your password to anyone.</p> <p>Should you forget your password, or you suspect it has been disclosed, inform your supervisor immediately so that appropriate action can be taken. Please note that all transactions are recorded.</p> <p>Your access authorization is issued on the basis of the present job you are doing. When you change jobs, your access to the system may also require change. If access to the system entitles you to create any programs, utilities, and/or Job Control Language, you are reminded that whatever you create is the property of the Crown.</p> <p>Keep all information confidential and secure according to the classification or designation of that data on the system.</p> <p>Immediately report any known or suspected security incidents to your local Security Administrator.</p> </div> <div style="width: 50%;"> <p>AUTORISATION D'ACCÈS</p> <p>Vos fonctions habituelles de travail exigent que vous ayez accès à des dossiers contenant des renseignements cotés «Protégé» et à des installations en direct à accès réservé. Afin d'avoir accès à ces installations protégées par un mot de passe, vous recevrez un code d'identification et un mot de passe que vous devrez utiliser uniquement dans le cadre de vos fonctions. Vous devez mémoriser votre mot de passe et ne pas le divulguer à qui que ce soit.</p> <p>Si vous oubliez votre mot de passe ou si vous croyez qu'il est connu, il faut en informer immédiatement votre superviseur afin que les mesures requises puissent être prises. Veuillez noter que toutes les transactions sont enregistrées.</p> <p>L'autorisation accès vous est accordée en raison du poste que vous occupez présentement. Si vous changez de poste, il faudra peut-être aussi modifier votre accès au système. Si votre accès au système vous autorise à élaborer des programmes, des programmes utilitaires ou des instructions de langage de contrôle, il ne faut pas oublier que tout ce que vous créez devient la propriété de la Couronne.</p> <p>Conservez tous les renseignements confidentiellement et en sûreté selon la classification ou la désignation des données du système.</p> <p>Signalez immédiatement tout incident de sécurité connu ou pressenti à l'administrateur de la sécurité de votre bureau local.</p> </div> </div>		
<p>This is to acknowledge receipt of my Logon-ID and password for access to the system and data resources, I will change my password immediately and restrict my use of the system for job related purposes only. I have read the above information.</p> <p>Par la présente, je reconnais avoir reçu mon code d'identification et mon mot de passe à des fins d'accès au système et aux données informatiques. Je changerai mon mot de passe immédiatement et l'utiliserai uniquement dans le cadre de mes fonctions. J'ai lu les renseignements ci-dessus.</p>		
Employee (Signature) Employé(e)		
MANAGER/SUPERVISOR - GESTIONNAIRE/SUPERVISEUR		
Active Date (Date the employee's system access becomes effective through the use of the Logon-ID and password) Date d'entrée en vigueur (Date à partir de laquelle l'employé ou l'employée peut accéder au système au moyen du code d'identification et du mot de passe)		Y - A M D - J
Termination Date (Date the employee no longer requires system access to perform assigned work, or when terminating employment with the department or office) Date de cessation d'emploi (Date à partir de laquelle l'employé ou l'employée n'a plus besoin d'accéder au système dans le cadre de ses fonctions ou date à partir de laquelle il ou elle cesse de travailler au ministère ou au bureau)		Y - A M D - J
Identify the specific system accesses the employee will require to perform his/her work. For access to the Taxation Top Secret Security (TSS) mainframe computer system a profile is required through which, during initial creation, on-line access is permitted. For access to the Customs and Excise ACF2 mainframe computer system, along with the TF469 form, an E522 Logon Request form is to be completed identifying the employee's specific system accesses.		Déterminez les accès au système dont l'employé ou l'employée aura besoin dans le cadre de ses fonctions. L'accès au système de l'ordinateur central Top Secret Security (TSS) de l'impôt se fait au moyen d'un profil qui, au cours de la création initiale, permet l'accès en direct. L'accès au système de l'ordinateur central ACF2 de Douanes et Accise se fait en précisant les accès au système accordés à l'employé ou à l'employée sur le formulaire E522 - Demande d'accès, en plus du formulaire TF469.
System Access - Accès au système		Customs and Excise ACF2 mainframe computer system; form E522 completed and attached. Système de l'ordinateur central ACF2 de Douanes et Accise, formulaire E522 dûment rempli et annexé.
		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Oui <input type="checkbox"/> Non
Manager/Supervisor (Signature) Gestionnaire/Superviseur		
SECURITY ADMINISTRATOR - ADMINISTRATEUR DE LA SÉCURITÉ		
Logon-ID - Code d'identification	Initial Password - Mot de passe initial	Date the Logon-ID is deleted: Date de suppression du code d'identification
		Y - A M D - J

Printed in Canada - Imprimé au Canada

Copy 1 Security Administrator
Copie Administrateur de la sécurité

Part 7

CUSTOMS ENFORCEMENT SYSTEMS, INFORMATION, AND INTELLIGENCE

Chapter 1

INTEGRATED CUSTOMS ENFORCEMENT SYSTEM (ICES) POLICY

Appendix C

CLASSIFICATION OF LOOKOUTS AND THE USE OF CAUTIONS IN ICES

30/05/04

APPENDIX C

CLASSIFICATION OF LOOKOUTS AND THE USE OF CAUTIONS IN ICES

The following are guidelines for the classification of lookouts input into ICES and for the use of “cautions” attached to these lookouts.

Generally speaking, a lookout may be categorized as either a “commodity” lookout or a “person” lookout.

A “commodity” lookout is a lookout for specific goods or commodities that may be imported or exported either by a person or as part of a shipment. The purpose of the lookout may be to ensure that permits are presented (verification) or when there is a suspicion the goods may be unlawfully imported or exported (enforcement).

A “person” lookout is a lookout assigned because the individual is the actual subject of the lookout. The purpose of this category of lookout may also vary and can range from the need to notify the person of an illness or death in the family, to a request by another agency to apprehend the person because they are wanted for the commission of a crime. Most however, are to ensure the individual is referred to secondary for more intensive examination.

Lookout Types

Note: This list may be expanded as required and with the approval of Customs Contraband Intelligence and Investigations (CCII).

Lookouts are classified according to the following “types”:

CITES (WAPPRITA) – this is a commodity lookout referring to the likelihood that an item listed within the three appendices of the Convention on International Trade in Endangered Species may be encountered.

Commercial Fraud – this is a person lookout used when an individual (or company) has a history of non-compliance with customs, usually involving the activity of under-valuation or misdescription.

Compassionate – this is a person lookout used to locate a person for compassionate reasons, e.g., there has been a death of a family member, an illness in that person’s family or a major incident involving that person’s family or property.

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Currency or Monetary Instruments/Suspected Proceeds of Crime: this is a commodity lookout referring to the likelihood that currency or monetary instruments in excess of \$10,000 Canadian are encountered that may be associated or linked to proceeds of crime within the meaning of 462.3 (1) of the Criminal Code or funds for use in financing terrorist activities.

Drugs – This is a commodity lookout alerting that drugs may be encountered.

Explosives – this is a commodity lookout alerting that explosives may be encountered

Export Control – this is a commodity lookout alerting that goods subject to export controls or the export of which is prohibited, controlled or regulated may be encountered.

Hate Propaganda – this is a commodity lookout suggesting that prohibited goods defined as “hate propaganda” under the *Tariff* may be encountered.

Immigration – this is a person lookout used for referring a specific individual to CIC.

Jewellery – this is a commodity lookout referring to the likelihood that jewellery may be encountered.

Kidnapping/Abduction: this is a person lookout used to identify a person who is suspected of kidnapping or abducting another person.

Liquor – this is a commodity lookout referring to the likelihood that illicit alcohol products may be encountered.

Lost/Stolen/Fraudulent Passports: this is a commodity lookout referring to the likelihood that lost, stolen, or fraudulent passports are encountered.

Lost/Stolen Licence Plate – this is a commodity lookout against a licence plate that has been reported as being lost, missing or stolen or belonging to a vehicle that has been reported as stolen. (Where an individual is wanted for being in possession of a stolen vehicle or licence plate, the lookout will be issued as a “wants and warrants” lookout.)

Missing Children – this is a person lookout used to identify children that have been abducted or are runaways.

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Other Agency Requirement – this is a lookout that can relate to either a person or a commodity. It is used when there is a need to notify another law enforcement agency that particular goods have been imported or exported (e.g., to notify the RCMP when copyright infringing goods have been imported), or when there is a need to track the movement of a person and/or monitor the goods they are importing.

Other Government Department Requirement – this is a commodity lookout when import requirements of an OGD must be met. This type of lookout would be used, for example, when all travelers arriving from a country with an outbreak of foot and mouth disease must be more thoroughly examined.

Pornography – this is a commodity lookout referring to the likelihood that goods defined as “obscene” or as “child pornography” under the *Tariff* may be encountered.

Proceeds of Crime – this is a commodity lookout referring to the likelihood that money or property that is obtained as the result of criminal activity may be encountered.

Rental Vehicle – this is a commodity lookout used to advise that a vehicle is registered to a rental agency.

Running the Port – this is a person lookout used when the individual has a history or is suspected on a previous occasion of having “run the port”.

Smuggling – General – this is a person lookout used when a specific individual is suspected of engaging in smuggling activity but the actual commodity is unknown.

Stolen Property: this is a commodity lookout referring to the likelihood that stolen property may be encountered.

Target – this is a person lookout entered by the targeting team following the review of passenger manifests to determine target passengers and when the nature of the lookout (e.g., drugs, terrorism, etc.) is not necessarily known at the time.

Terrorism – this is a person lookout used when the individual is suspected of being a member, associate or sympathizer of a known terrorist organization, but there is no outstanding warrant for apprehension of the individual. Where the person is wanted for questioning, or there is a warrant for arrest, it will be listed as a “wants and warrants” lookout.

Tobacco – this is a commodity lookout referring to the likelihood that illicit tobacco products may be encountered.

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United States Customs: this is a person lookout used to identify a person who may be of interest based on reliable information from the U.S. Department of Homeland Security, Customs and Border Protection (US DHS/CBP).

Wants and Warrants – this is a person lookout used when a request has been made by the police or other law enforcement agency for the apprehension of a specific individual for purposes of questioning or there is an outstanding warrant for that person's arrest. A "wants and warrants" may also be used when the person is wanted as a material witness in a criminal proceeding.

Weapons – this is a commodity lookout referring to the likelihood that firearms or prohibited weapons may be encountered. This classification is not used when a person is wanted for questioning or apprehension ("wants and warrants") and is suspected to be armed with a firearm or weapon.

Cautions

Cautions are not a mandatory field and should only be used when there is a need to communicate potential dangers and/or known risks so that preventative measures can be taken to avoid the danger or mitigate the risk.

Note: Examples given for the use of cautions are not all encompassing.

Types of "cautions" and their intended uses are listed as follows:

Armed and Dangerous – this caution is used to alert customs inspectors to potential real dangers involving a particular individual. It normally is issued in conjunction with a "wants and warrants" lookout when, for example:

- a person fleeing the scene of a crime where weapons are known to have been used or displayed; or,
- the law enforcement agency providing the information indicates the person is or is reasonably believed to be armed and is liable to be dangerous.

This caution may also be issued in conjunction with any other lookout where the Regional Intelligence Officer (RIO) has determined, given the individual's past criminal history or based on collateral intelligence, that he/she is more than likely to be armed with a weapon and is liable to use it.

Known Drug User – this caution is used when the individual is a known or suspected drug abuser and there is the possibility that contaminated needles may be encountered in the person's baggage, vehicle or on their person.

APPENDIX C

Known to Flee Authority – this caution is used when the individual has a recorded history or criminal record involving:

- escaping from lawful custody;
- flight from a police officer; or
- running the port.

Known to Resist Arrest – this caution is used when the individual has a recorded history or criminal record involving resisting arrest or obstructing a peace officer.

May Pose a Health Risk – this caution is used when the individual is known or suspected to have a communicable or contagious disease that may pose a health risk to those who encounter the person. These cautions will normally be issued upon advise of Health Canada.

Mentally Unstable – this caution is used when the person is known to have a history of mental illness; has walked away or escaped from a mental institution; or requires medication for mental health reasons.

Violent – this caution is used when the individual has demonstrated a propensity toward aggressive behaviour, without a weapon, including:

- convictions or outstanding charges for assault or assaulting a peace officer;
- a history of confronting law enforcement officials;
- one or more restraining orders issued against him/her in respect of a person or an institution.

CUSTOMS ENFORCEMENT MANUAL

Part 7

CUSTOMS ENFORCEMENT SYSTEMS, INFORMATION, AND INTELLIGENCE

Chapter 2

CUSTOMS ENFORCEMENT LIBRARY POLICY AND PROCEDURES

30/05/05

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to capture, store, and monitor customs enforcement and intelligence information on the Customs Enforcement Library database and disseminate this information in an approved and secure manner.

DEFINITIONS

2. Refer to Part 11 - Glossary.

AUTHORITIES

Privacy Act

3. Section 4 – Limits the collection of personal information to that directly related to an operating program or activity of an institution.
4. Section 6 – Requires a retention period for personal information collected.

Note: Regulations for customs purposes require at least a two-year retention period.
5. Section 7 – Limits the use of information to the purposes for which it was collected.
6. Section 8 – Limits the disclosure of information but provides for disclosure to an investigative body.

Customs Act

7. Section 107 – Allows for the provision to others, access to others, and use of customs information that is gathered in the administration or enforcement of the *Customs Act* or the *Customs Tariff* or is prepared from such information.
8. Section 160 – States that unauthorized disclosure of customs information is a punishable offence.

BACKGROUND

9. The CBSA is committed to enhancing border protection and providing improved services through automated support. This is accomplished in part through the electronic management of enforcement and intelligence information. One important customs tool for the capture and management of enforcement and intelligence information is the Customs Enforcement Library.
10. The Customs Enforcement Library system is utilized for the storage and dissemination of all documents relevant to the enforcement role of the CBSA.
11. The library provides on-line access to enforcement and intelligence related information for all users. The types of documents available range from intelligence reports to complete publications and manuals on concealment methods and drug identification. Users have the ability to search the library for information based on words or phrases, and have applicable documents returned for viewing with the search terms identified. The library also supports the transmission of images.

PURPOSE AND SCOPE

12. The purpose of this policy is to provide guidelines for the utilization and maintenance of the Customs Enforcement Library.
13. This policy applies to all CBSA employees with access to or whose positions require them to use information from the Customs Enforcement Library database.

POLICY GUIDELINES

User Access

14. Access to the Customs Enforcement Library will be controlled by a user profile.

Note: User profiles will be based on users' work positions and the principle of "need to know."

15. All potential users must submit a request for access through their supervisor to the Enforcement Branch, Intelligence Directorate.

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Customs Enforcement Library

Note: The Analysis and Assessment Division will review all requests. Approved requests will be forwarded to the ICES Operational and Maintenance Support Unit, Distributed Systems, Innovation, Science and Technology who will assign the user an appropriate user profile and activate the user in the Customs Enforcement Library.

16. All users must have a CBSA issued LAN account (user ID) before they are activated in the Customs Enforcement Library.

Note: The account is obtained by completing form TF469, Computer Information Access Authority, and submitting it to the users' local security services official or local access administrator identified in the users' area.

Note: See Part Seven, Chapter One, Integrated Customs Enforcement System (ICES) Policy, Appendix B for a sample of form TF469.

17. Users may not under any circumstances share their password or user ID with other users or persons.
18. Library users are responsible for all transactions completed using their user ID and password. The owner of the user ID is liable for any misuse or compromise of the system and data contained in its databases.
19. The minimum-security level for access to the Library is enhanced reliability.

User Profile Maintenance

20. The ICES Operational Maintenance and Support Unit is responsible for all user maintenance for the library and this responsibility will not be delegated.
21. The ICES Operational Maintenance and Support Unit must be notified as soon as possible of any changes due to transfer, promotion, change in duties, or termination of employment of library users.

Note: The responsibility for this notification will rest with the local or regional information technology services, which must be informed by the supervisor of the person affected.

Information Management

22. Regional and headquarters administrators are responsible for updating and maintaining all information that they put in the Customs Enforcement Library.

EN Part 7 Chapter 2

Customs Enforcement Library

23. The Intelligence Directorate is the national administrator of the Customs Enforcement Library and is responsible for establishing the subject categories, levels of access, and system retention default periods for each document type, as well as the maximum number of documents to be returned as the result of a search query. The Directorate also acts as a national coordinator and provides guidance to regional administrators.
24. Intelligence bulletins, alerts, and reports produced within the CBSA with a security classification of "Protected" or lower will be included in the Customs Enforcement Library.
25. Documents with a security classification higher than "Protected" will not be included in the Customs Enforcement Library.
26. Access levels to documents will be assigned according to the need to know and right to know principles. Documents will not be assigned access levels more restrictive than that warranted by the information they contain.
27. The Intelligence Directorate and each regional Intelligence and Contraband (I&C) Division will designate Intelligence Analysts as Library Administrators to catalogue and input all documents that are deemed to be appropriate for inclusion.

Dissemination of Library Information

28. In instances where information must be disseminated to personnel who do not have the required security clearance level, the material must be sanitized to ensure protection of the information and the source.
29. All documents stored in the Customs Enforcement Library will be considered the property of the original publisher.
30. When providing document information from the Customs Enforcement Library to another agency or other government department, each page of the document(s) must clearly state:

"This document is the property of the CANADA BORDER SERVICES AGENCY. It is provided on the understanding it will be used solely for official purposes by your agency and that it will not be further disseminated without the written permission of the CANADA BORDER SERVICES AGENCY office of origin or Headquarters."
31. Recipients must adhere to the third party rule and obtain written permission from the originator to further disseminate information, in whole or in part, from the Customs Enforcement Library.

System Security

32. The Library system and the data contained therein are designated "Protected."
33. Customs Enforcement Library workstations located at the ports of entry will be located in secondary referral areas only and not at Primary Inspection Lines (PIL).
34. To prevent viewing of data, system terminals and printers must be positioned away from areas commonly used by unauthorized individuals.
35. All Library users will log off the system at the end of their session and clear any printed matter pertaining to the Library from any associated printer.
36. All printed matter will be stored and used in a manner preventing access by unauthorized personnel. In addition, all printed matter will be destroyed in accordance with government policy.
37. Users may access data only in the manner authorized for the performance of their duties.
38. Any use of the system or system data for unethical, illegal, or inappropriate purposes is strictly prohibited and may be cause for disciplinary action up to and including termination of employment and criminal prosecution.

Note: Examples of inappropriate use include, but are not limited to:
 - a) unauthorized use of a user ID and password;
 - b) accessing the system for personal gain;
 - c) accessing system information for the benefit of the user or another person;
 - d) disclosing information contained on the system to unauthorized persons; and
 - e) intentionally interfering with the normal operation of the system.
39. Breaches of established Library procedures and policy violations must be reported to the Intelligence Directorate. All policy violations will be investigated and the necessary corrective and/or disciplinary action taken.
40. Under no circumstances will Library information be divulged to travellers.

EN Part 7 Chapter 2

Customs Enforcement Library

41. Standards for system security of the Library including physical security, data security, and site maintenance will be those required under the Treasury Board Information and Administrative Security Manual, the Government of Canada's Technical Security Standard for Information Technology and Security Bulletins, CBSA security standards, and related Agency administrative management policies.

System Maintenance and Management

42. In consultation with the Intelligence Analysis Section of the Intelligence Directorate, the Distributed Systems Section, Innovation, Science and Technology Branch will monitor Library use and effectiveness on a national basis, maintain the system operations, and develop and implement upgrades to the system.
43. The addition of uncertified software and use of a Library workstation for other applications must be approved by the Director General of the Intelligence Directorate.

ROLES AND RESPONSIBILITIES

Intelligence Directorate

44. The Intelligence Directorate is responsible for:
 - a) developing, modifying, and approving all policies related to the use of the Customs Enforcement Library, user access, its data banks, files and records, and outside system interfaces;
 - b) reviewing and approving or rejecting requests for user access to the Library;
 - c) updating and maintaining the content of the Customs Enforcement Library;
 - d) approving additional system functionality and expansion, including expansion of the system outside of customs; and
 - e) ensuring that processes and policies of other directorates, divisions, agencies, and other government departments are adhered to in the development, implementation, and operation of the Library.

Library Administrators

45. Library Administrators are responsible for:

- a) adhering to these policies and procedures; and
- b) cataloguing and inputting all documents that are deemed to be appropriate into the Customs Enforcement Library.

Regional Director Generals

46. Regional Director Generals are responsible for:

- a) ensuring that the policies and procedures relative to the site operation and use of the Library in their region are adhered to;
- b) investigating and reporting all instances of Library policy and security breaches to the Security Directorate and the Intelligence Directorate; and
- c) taking appropriate corrective action on policy and security breaches.

Security Directorate

47. The Security Directorate is responsible for:

- a) advising the Intelligence Directorate on operational and policy matters related to the security of the Library and its data; and
- b) investigating security breaches pertaining to the Library and reporting the results to the Regional Director General and the Intelligence Directorate.

Innovation, Science and Technology

48. The Innovation, Science and Technology Branch is responsible for:

- a) assigning user profiles and activating users in the system;
- b) ongoing system maintenance and support of the Customs Enforcement Library operations;
- c) monitoring system use and effectiveness on a national basis;
- d) reporting system anomalies to the Intelligence Directorate; and

- e) developing and implementing upgrades to the system.

PROCEDURES

Note: For procedures on the use of the Customs Enforcement Library, refer to the internal system help function.

Library Administrators

- 49. Review CBSA and external source documents to determine suitability for inclusion in the Library.
- 50. Ensure documents do not already exist within the Library.
- 51. Contact sources of externally produced documents for copyright permission prior to storage in the Library.
- 52. Document copyright permission in the Library document properties window.
- 53. Catalogue and input documents into the Library in a timely manner, preferably within one week of receipt.

Note: Library Administrators must expedite entry of documents that are identified as having an immediate tactical or operational impact.

- 54. Determine subject category.
- 55. Catalogue documents.
- 56. Assign access level.
- 57. Establish document retention periods.
- 58. Determine whether documents reaching the end of their designated retention period should be retained on the system for a further period, archived, or deleted from the system.
- 59. Conduct on-line reviews of Library activities to ensure ongoing compliance with CBSA policy, enforcement priorities, and strategies.

REFERENCES

60. *Customs Act*
Access to Information Act
Privacy Act
Criminal Code
Government of Canada Technical Security Standards for Information
Technology
Revenue Canada Information Technology Security Policy and Security
Bulletins
Treasury Board Information and Administrative Management Security
Manual



Canada Border
Services Agency

Agence des services
frontaliers du Canada



Policy on the Disclosure of Customs Information:

Section 107 of the *Customs Act*

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VERSION CONTROL

Version	Author	Action	Date
1.0	Information Sharing Unit	- Approval	December 20, 2012
2.0	Information Sharing & Collaborative Arrangements Policy Unit	<ul style="list-style-type: none"> - Updated Introductory section - Amended Authority-to-Disclose matrices - Removed: "Appendix – Where to Direct Requests for Customs Information" - Removed: "Appendix – Legislation – Section 107 of the Customs Act" - Removed: "Appendix – Legislation – Section 160 of the Customs Act" 	November 17, 2014
3.0	Information Sharing & Collaborative Arrangements Policy Unit	<ul style="list-style-type: none"> - Added a section on "<u>Proactive Disclosures</u>" - Updated all Approval Tables with Proactive Disclosure column - Added guidance on new legislative paragraph 107(4)(j), and subparagraphs 107(5)(j)(i) & 107(5)(j)(ii) 	August 12, 2015
3.1	Information Sharing & Collaborative Arrangements Policy Unit	- Amended the " <u>Questions & Considerations</u> " section	October 1, 2015
3.2	Information Sharing & Collaborative Arrangements Policy Unit	- Added guidance on new legislative paragraphs 107(5)(l.1) and 107(5)(l.2)	November 20, 2015
3.3	Information Sharing & Collaborative Arrangements Policy Unit	<ul style="list-style-type: none"> - Updated Introductory section to remove reference to "Advance Passenger Information (API)" - Amended the Approval Table for subparagraph 107(5)(h) 	September 15, 2016

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INTRODUCTION

EFFECTIVE DATE

This policy takes effect on December 20, 2012.

HOW TO USE THIS DOCUMENT

Readers are encouraged to familiarize themselves with this policy as a whole before referring to the section that is most relevant to their interest.

The CBSA has two main pieces of legislation which authorize the disclosure of information under its control: section 8 of the *Privacy Act* and section 107 of the *Customs Act*. Please note that section 107 of the *Customs Act* only supersedes section 8 of the *Privacy Act*. All other sections of the *Privacy Act* apply to customs information that also contains personal information.

Note: Explanations and examples contained in each part of this document relate exclusively to that part. It should not be assumed that explanations or examples contained in one section apply to another section or different subsection.

PURPOSE AND SCOPE

The purpose of this document is to provide CBSA employees and the general public policy guidance concerning the interpretation and application of section 107 of the *Customs Act*. Section 107 outlines how customs information may be used, to whom it may be disclosed and who may access it.

“customs information” means information of any kind and in any form that

- (a) relates to one or more persons and is obtained by or on behalf of
 - (i) the Minister for the purposes of this Act or the *Customs Tariff*, or
 - (ii) the Minister of National Revenue for the purposes of the collection of debts due to Her Majesty under Part V.1;
- (b) is prepared from information described in paragraph (a).

This document does not address the collection of customs information.

It also does not address the provision or use of Passenger Name Record data. Please refer to [Memorandum D1-16-3](#), *Administrative Guidelines for the Provision to Others, Allowing Access to Others and Use of Advance Passenger Information (API) and Passenger Name Record (PNR) Data*, for further information.

CBSA employees responsible for approving the disclosure of customs information should read this document in conjunction with other relevant policies and procedures, which are outlined in the “Policies and Guidelines” section below.



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POLICIES AND GUIDELINES

The following policies and guidelines are relevant to customs information and information sharing activities at the CBSA. They include, but are not limited to, the following:

CBSA Policies Relating to the Disclosure of Information

- [Policy on the Disclosure of Personal Information: Section 8 of the *Privacy Act*](#)
- [Policy on Implementing the Ministerial Direction to the CBSA on Information Sharing with Foreign Entities](#)
- [Operational Guidelines to support the Policy on Implementing the Ministerial Direction to the CBSA on Information Sharing with Foreign Entities](#)
- [Operational Guidelines – Disclosure of Information for Enforcement and Intelligence](#)
- [Operating Procedures for Public Interest Disclosures under 8\(2\)\(m\)\(i\) of the *Privacy Act*](#)
- [Operating Procedures for Public Interest Disclosures under 107\(6\)\(a\) of the *Customs Act*](#)

Related CBSA Policies

- [Policy and Guide for the Management and Development of Written Collaborative Arrangements \(WCAs\)](#)
- [CBSA Information Management Policy](#)
- [Records Retention and Disposition – Policy](#)
- [Safeguarding of Original Written Collaborative Arrangements – Policy](#)
- [Policy on the Protection of Classified and Protected Information and Assets outside the Workplace](#)

CBSA Instruments

- [Guidelines for the Classification and Handling of Information Assets](#)
- [Inventory of Written Collaborative Arrangements](#)
- [CBSA Infosource](#)
- [CBSA *Privacy Act* Delegation Order](#)
- [Delegation – Authorization to Exercise Powers or Perform Duties and Functions of the Minister of Public Safety and Emergency Preparedness under the *Customs Act*](#)

Other Departmental Instruments

- [Department of Foreign Affairs and International Trade \(DFAIT\) Policy on Tabling of Treaties in Parliament](#)
- [Canada Treaty Information](#)

Treasury Board of Canada Secretariat (TBS) Policies

- [TBS Policy on Information Management](#)
- [TBS Privacy and Data Protection Policies and Publications](#)
- [TBS Guidance on Preparing Information Sharing Agreements Involving Personal Information](#) (July 2010)
- [Directive on Privacy Practices](#) (April 2010)
- [Guidelines for Privacy Breaches](#) (2007)

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STATUTES AND POLICIES THAT IMPACT THE DISCLOSURE OF CUSTOMS INFORMATION

Several federal statutes and policies impact how customs information and related records are to be disclosed and managed such as:

- The *Canadian Charter of Rights and Freedoms* (the *Charter*) was signed into law on April 17, 1982. It bestows civil rights on everyone present in Canada and protects their personal information held by the Government of Canada, including information held in Canadian embassies. All Canadian legislation must be interpreted in light of the *Charter* and related jurisprudence. Several rulings of the Supreme Court of Canada have identified an individual's **reasonable expectation of privacy** as a fundamental right under the *Charter* and have issued rulings that impact how federal institutions collect and manage personal information. For example, the Supreme Court of Canada has stated that information sharing is the equivalent to "search and seizure", and thus all information sharing must be compliant with section 8 of the *Charter*.
- The *Access to Information Act* provides individuals with the right to access records under the control of federal institutions.
- The *Privacy Act* provides individuals with the right to access their own records under the control of federal institutions. It contains provisions relating to the collection, use, disclosure, retention, and disposal of personal information. Any disclosures of information under the *Privacy Act* must be specifically authorized by one of the exceptions or provisions listed in section 8 of that Act. However, any personal information that is collected for the administration or enforcement of the *Customs Act*, is customs information, and may only be disclosed under section 107 of the *Customs Act*.
- The disclosure of information is subject to Treasury Board policies and guidelines such as the *Directive on Privacy Practices* (April 2010), *Guidance on Preparing Information Sharing Agreements Involving Personal Information* (July 2010) and *Guidelines for Privacy Breaches* (2007).



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KEY CONCEPTS ABOUT INFORMATION

The Supreme Court of Canada (SCC) has identified a number of key concepts relating to the collection and disclosure of personal information. They are:

- biographical core of personal information
- search and seizure (of information)
- reasonable expectation of privacy

These concepts work together to define and protect an individual's privacy rights. However, the privacy protections afforded by applying these concepts will vary according to context. Please note that the examples provided in the following sections are **not** intended to be comprehensive, but to serve as introductions to these concepts.

Biographical Core of Personal Information

The SCC has identified that some information collected by federal government institutions may be described or categorized as an individual's **biographical core of personal information**. This biographical core of personal information is defined as information which tends to reveal intimate details of the lifestyle and personal choices of the individual that the individual normally **does not** expect the government to collect; additionally, if the government has a lawful authority, such as in the border context, and the need to collect that information, the individual would not expect the government to further disseminate that information.

The SCC has also indicated that what is defined as the biographical core of personal information will vary according to context. In other words, for some situations, a particular piece of information may be considered part of an individual's biographical core of personal information, while in different circumstances the same information might not be categorized as such.

For example, an individual's sexual orientation is normally considered part of their biographical core of personal information; normally there would be little need for the government to collect this information. However, if an individual was sponsoring their same-sex spouse or partner for permanent resident status, then there would be a need to collect and/or disclose this information, since the immigration context would require it in order to process the individual's file.

Search & Seizure

In administering and enforcing various legislation, the CBSA collects and discloses a significant amount of information, including personal information, some of which may fall under the scope of an individual's biographical core of personal information.

Since the SCC has indicated that the collection and disclosure of personal information is considered a form of "**search and seizure**," section 8 of the *Charter* must always be considered. Section 8 guarantees the right to be free from **unreasonable** search and seizure. In other words, section 8 of the *Charter* protects an individual's reasonable expectation of privacy.

Reasonable Expectation of Privacy (REP)

The right to a "**reasonable expectation of privacy**" has been identified by Supreme Court jurisprudence. This right is fundamentally linked to section 8 of the *Charter* which states that everyone has the right to be secure against unreasonable search and seizure.

An individual's REP is considered "engaged" when they could reasonably believe that their privacy rights outweigh the state's interest in collecting or disclosing their information. Any information that is lawfully collected by federal government institutions that may be categorized as part of an individual's biographical core of personal information is likely to engage that individual's reasonable expectation of privacy.

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However, what is considered a “reasonable” expectation of privacy will depend on the context of the search and seizure (i.e. when and how the information is collected or disclosed and for what purpose). Potentially, **any** piece of personal information could engage an individual's REP. The reasonableness of the search and seizure is determined on a case-by-case basis, by balancing the state's need for the information against the individual's interest and expectations of privacy under a given set of circumstances. Consider the following two examples:

Example 1: A traveller crosses the border into Canada. The Border Services Officer asks the traveller a series of questions regarding the nature of their trip, how long they were gone, the value of the goods that they are bringing back, etc. The traveller may be sent to secondary for an examination of their goods. The traveller may be escorted into a private room for a personal search (i.e.: full disrobement).

Example 2: A driver is pulled over by the police due to a tail light not working. There are no illegal items in plain sight in the vehicle (such as drugs or firearms). The police constable proceeds to ask the driver a series of questions regarding the nature of their trip, how long they were gone, the value of any goods that they had purchased, etc. The constable then searches the vehicle. As a final step, the constable performs a personal search on the driver.

In both of the examples, the same activities took place, i.e.: questioning, the search of goods and a personal search. However the circumstances surrounding the activity play a significant role in determining whether the individual's REP is engaged. In example 1, there is a lower expectation of privacy when crossing an international border, as recognized by the SCC, so the REP of the traveller is not engaged since they know that these activities may happen when they cross an international border. However, in example 2, the driver's REP is engaged from the moment the police constable starts to ask questions that do not relate to the laws surrounding the safe operation of vehicles.

Please note that while travellers have a lower expectation of privacy at an international port of entry, as recognized by the SCC, they still have **some** expectation of privacy in certain situations.

Summary of Key Concepts in a Single Example

To see how these concepts work together, consider the following: an individual's lifestyle choices are normally considered part of their biographical core of personal information. An individual importing adult toys and videos into Canada has a reasonable expectation of privacy in regards to their purchases that reflect their lifestyle choices, and therefore collecting or disclosing that information for no applicable reason (i.e., without cause) would generally be considered an unreasonable search and seizure.

However, when viewed in the context of certain laws, an individual's lifestyle choices may not be considered biographical core of personal information. If that individual was under investigation for child pornography, the Government of Canada would need to collect and/or disclose information regarding the individual's lifestyle choice in order to conduct the investigation. The individual's reasonable expectation of privacy would be lowered in such circumstances, and the search and seizure of information relating to their lifestyle choice (importation of child pornography) would be considered reasonable.

Consulting the Information Sharing and Collaborative Arrangements Policy (ISCAP) Unit

CBSA officials should consider consulting the [Information Sharing and Collaborative Arrangements Policy Unit](#) prior to disclosing personal information that is likely to engage a person's REP. When appropriate, the ISCAP Unit will consult with Legal Services to determine the Agency's response to the request. In cases where a CBSA official has concerns as to whether a request is reasonable, the official may advise the requester that a subpoena or a judicially authorized warrant **may** be required. By having a judge make the determination on the reasonableness of a request, the CBSA is exercising due diligence in ensuring that a requester is accorded the benefit of having a neutral third party determine if the request is reasonable or not.



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PROACTIVE DISCLOSURES

A “proactive disclosure” is defined as a disclosure that is made when a CBSA official provides information to a recipient outside of the CBSA **without** the recipient having asked for the information. In other words, **information is being provided without a request**.

Disclosures that are made in accordance with the terms of a written agreement and that are made on a systematic basis, despite no specific request having been received for that information, are not considered proactive disclosures. An assessment of what is to be shared and the process for deciding the appropriateness of the sharing has already been done during the creation of the WCA.

When to make proactive disclosures

Deciding to make a proactive disclosure is a highly discretionary decision that is to be exercised with care on a case-by-case basis. It has a greater risk of *Charter* infringement and a higher risk of injury to public or private interests. As such, these disclosures require added consideration. A lawful authority must always exist and the onus is on the official approving the disclosure to ensure that there is a solid rationale for the disclosure.

Proactive disclosures should only take place when an official is of the opinion that the state’s interest clearly outweighs the person’s expectation of privacy, and the information being shared is accurate and was obtained in the course of administering or enforcing the Agency’s program legislation.

For additional clarity, during the course of their regular duties, CBSA officials may incidentally come across indications / evidence of wrong-doing that is outside of the Agency’s mandate to address. A proactive disclosure could be considered in these situations. Please note however, that CBSA officials **cannot** investigate or intentionally collect information for purposes outside of the Agency’s mandate.

Reasonable Expectation of Privacy (REP) in relation to proactive disclosures

Since the CBSA is unlikely to make proactive disclosures for relatively minor infractions (such as a missing or expired trailer permit), as a starting point it should be taken for granted that **any** proactive disclosure by the CBSA may have significant implications and **will** engage the subject’s REP. When an individual’s REP is engaged, there is a greater chance of a violation of section 8 of the Canadian Charter of Rights and Freedoms (i.e.: that person’s right against unreasonable search and seizure).

Supreme Court of Canada jurisprudence indicates that there is measurable quality to REP as well, which allows for a balancing of society’s interest in protecting privacy rights with effective law enforcement. One way of looking at it is to ask “what course of action in terms of sharing information would a reasonable person, having access to all of the facts, (including context) consider reasonable”?

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Process for making a proactive disclosure

STEP 1: Determine what the CBSA's lawful authority is to disclose the information to the intended recipient.

A legislative authority to disclose must exist in order for CBSA officials to disclose the information proactively. Put another way, if a request for that same information were to be received, there would have to be a lawful authority for that information to be disclosed and the appropriate approval levels applied for that particular legislative disclosure authority. The same concept holds true for a proactive disclosure and its consultation step is explained below.

Note: If you are unable to find a lawful authority to disclose, but believe that the potential infraction/wrong-doing is sufficiently grave that a proactive disclosure should be made, please consult the Public Interest Disclosure Procedures in the [Information Sharing Toolkit](#).

STEP 2: Contact the intended recipient to provide them with a depersonalized explanation of the situation.

When a CBSA official or other party sends a request for information, the receiver can assume quite logically that the requestor believes the information they requested is relevant for their purpose. Also, a properly formulated request normally provides sufficient information to make at least a preliminary determination of the legislative purpose for which the information is being sought.

However, when a proactive disclosure is being considered by a CBSA official, the usefulness or relevance of the information and how in fact it will be used to further another institution's mandate is usually not readily available or is more difficult to clearly determine.

Consequently, **all** proactive disclosures **must** be preceded by a consultation. As mentioned previously, proactive disclosures have a greater risk of *Charter* infringement than request-based disclosures. When considering approval for a consultation, the approving official should exercise the same thought process they would as if they had received a disclosure request.

The primary goal of a consultation for proactive disclosure is to determine whether the information:

- would be relevant to the mandate of the intended recipient;
- can be used legally by the recipient towards identified possible outcomes; and
- will in fact be used by the recipient - they may not have the resources to act on the information, despite its relevancy and available legal means to use it. Information should not be shared unless it will be put to use appropriately at the time it is received.

The consultation must address these three aspects in a hypothetical manner, in writing if security requirements allow, and must be devoid of identifying information (i.e., the name of a corporation or a person) and devoid of all other personal information. The exchange should cover data elements that could be provided, not the actual content of the data elements.

For example:

GOOD consultation: *"The CBSA has information indicating that an individual may be plotting a possible terror attack in Montreal. Does your mandate cover investigating such crimes and if so, are you are interested in the identity of the subject? If yes to the previous questions, could you indicate your lawful authority to collect this information, and the possible outcomes of your use of the information?"*

VS

BAD consultation: *"Would it be helpful if I officially disclosed to your institution that John Smithy Smiths, date of birth June 5, 1998, underwent a secondary examination at the border and officers found written plans indicating he intends to plant a bomb under the Jacques Cartier Bridge in Montreal?"*



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STEP 3: Disclose only the minimum information needed by the recipient to confirm their interest.

If you are satisfied that the intended recipient is interested in receiving the information, has a lawful authority to collect it, and has outlined the possible outcomes and the possible uses and you are also satisfied with the stated uses, then you may disclose the minimum information needed by the recipient to confirm their interest.

Once the recipient has confirmed their interest, they may make a formal request for any additional information and the CBSA will process the request as a regular request for information.

STEP 4: The CBSA authorizing official must record the proactive disclosure and document their rationale.

Details about the consultation and the rationale for the disclosure decision are to be kept in the pertinent CBSA file. It is extremely important that greater attention be given to this step due to the greater risk of *Charter* infringement than request-based disclosures. Additionally, any policy requirements regarding recording the disclosure activity must be adhered to. For example, all disclosures of information under the [Security of Canada Information Sharing Act](#) must be recorded in a specific manner specified in the [CBSA Directive on SCISA](#).

Caveats

Proactive disclosures **must** be accompanied by a caveat that specifies, at minimum, that the CBSA will be advised if the information it disclosed will be forwarded by the recipient to another institution or foreign government. This ensures that corrections or updates can be sent to any institution that has received the information contained in the original disclosure.

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QUESTIONS & CONSIDERATIONS RELATED TO THE DISCLOSURE OF INFORMATION

The Supreme Court of Canada has stated that discretion must be exercised when information is being disclosed, otherwise there is a very strong chance that the disclosure will be considered unreasonable and a breach of the subject's section 8 Charter rights, or in other words, a breach of the subject's reasonable expectation of privacy. Disclosures should be made on a case-by-case basis, unless provisions have been made through a written arrangement for a well-defined, regular or systematic sharing of information.

Below are a series of questions and considerations to help guide the thought process of CBSA officials in ensuring that their discretion is properly exercised. These questions and considerations apply to both request-based disclosures and proactive disclosures.

The steps below are exhaustive and cover virtually all information sharing scenarios; however, the depth of analysis may vary greatly depending on the complexity of the situation. Further, those who share information on a regular basis will likely develop a familiarity with the process and will be able to use the following material as a reference.

OUTGOING INFORMATION	Request Based	Pro Active
1. Understanding the situation		
Confirm identity of requestor / recipient.	X	X
Confirm identification of legislation being enforced or administered by requestor / recipient.	X	X
Confirm data elements involved.	X	X
Authorized consultation with recipient (for proactive disclosures only).		X
2. Analyzing the situation		
<i>Alternate Source:</i> can the info be obtained from another / better source?	X	X
<i>Accuracy:</i> assess the accuracy level of the information.	X	X
<i>Type of Information:</i> customs or personal (non-customs) information?	X	X
<i>Disclosure Provision:</i> disclose under CA 107 and/or PA 8?	X	X
Can the CBSA refuse to disclose information?	X	X
Does REP outweigh the benefit of disclosing?	X	X
Review the considerations / clause-by-clause guidance in this policy.	X	X
<i>Proactive disclosure only: minimum disclosure</i> – only enough information to determine further interest.		X
<i>Minimum Disclosure:</i> only enough information to address the specific request.	X	X
<i>Caveats:</i> respect third-party caveats attached to the information.	X	X
<i>Caveats:</i> prepare appropriate caveats regarding recipient use and onward disclosure.	X	X
3. Making a disclosure decision		
Present disclosure recommendation to appropriate authority for approval.	X	X
Obtain approval for the disclosure and document decision (see Administrative Stage).	X	X
4. Administrative Stage		
Record your information-sharing activity.	X	X
Ongoing disclosures of similar nature? If yes, contact ISCAP Unit to discuss.	X	X



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PHASE I - UNDERSTANDING THE SITUATION

Confirm identity of the requestor / recipient

- CBSA officials must be reasonably satisfied with:
 - the identity of the requester or recipient;
 - their role within their particular institution; and by extension,
 - their right to receive and use the information.
- For example, the request may have been issued from another government department's general e-mail address account. The onus is on the official to confirm the actual identity of the requester, such as their name and title or badge number.
- The official should also be reasonably satisfied that the requestor or recipient has duties or a role within their institution that warrants their receipt of the information in question; often, the right to know or use information is specific to a particular area or role within an institution, rather than the institution as a whole.
- If the official is uncertain of the requester's or recipient's identity, or their right to know or use the information in question, the official should take appropriate steps to confirm these matters prior to considering the disclosure request or a proactive disclosure.

Confirm identification of legislation being enforced or administered by requestor / recipient

- Identifying the recipient's pertinent legislation is necessary for you to be able to conduct an effective analysis that properly supports whatever disclosure decision is made.
- The recipient should identify as specifically as possible (i.e., down to the sub-section or paragraph level where necessary or possible) the legislation that will be administered or enforced by the recipient or their institution. For proactive disclosures, this can be determined from the recipient during the mandatory consultation step.
- It should also be confirmed to the satisfaction of CBSA officials making the disclosure decision that the legislation identified is indeed part of the mandate, jurisdiction or responsibilities of the recipient.
- The recipient must also identify the use or purpose of collecting the information, and the intended or possible outcomes. For example, the information could be used to investigate an alleged offence, and the potential outcomes could be a closing of the investigation or prosecution of the individual with a minimum penalty of 6 months incarceration, and a maximum penalty of 4 years' incarceration.

Confirm data elements involved

- The information being considered for disclosure should be specific, i.e., specific data elements and/or date ranges or locations should be identified and considered as restrictively as practicable.
- It is rarely acceptable for a request to specify, (or a proactive offer of information to provide) "ALL" information related to a particular individual or business.
- Providing **all** available information significantly increases the risk of providing more information than necessary, and consequently increases the risk of a breach of privacy and a resulting wide variety of negative consequences for doing so.
- Moreover, extremely broadly worded requests (or proactive offers of information) likely indicate that due diligence has not been applied in determining what information is actually needed, and should serve as a cautionary flag regarding the practices and procedures of the requestor (or offering entity) in general.
- It is important to note that responding to a request by stating that the CBSA has no information is in fact a disclosure of information, and requires the same level of analysis and rigour as disclosing any other information. Responses indicating that no information will be disclosed should be neutrally worded and free of insinuation. For example, "The CBSA will not be providing any information in response to your request."

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Authorized consultation with recipient (for proactive disclosures only)

- Consultation with the potential recipient of a CBSA proactive disclosure must first be approved by an official who is at a rank or level authorized to approve a request-based disclosure. The actual disclosure, in most cases, will be approved at a higher level specific to proactive disclosures. (See Approval Tables specific to the given legislative authority to disclose.)
- The onus is on the approving official to ensure that there is a solid rationale for the consultation.
- The primary goal of a consultation is to determine whether the information:
 - would be relevant to the mandate of the intended recipient;
 - can be used legally by the recipient; and
 - is of interest for the recipient - they may not have the resources to act on the information, despite its relevancy and available legal means to use it.
- Please refer to the **Proactive Disclosure** section of this policy for more details on the consultation process and how it should be conducted.

PHASE II - ANALYZING THE SITUATION

Alternate Source: can the info be obtained from another / better source?

- If a CBSA official is aware that the information is in the possession of another institution or originated from another institution, the official should consider redirecting the requestor or potential recipient to either the original collector of that information, **or** to another institution that holds the information and where that institution has the best-suited mandate for the use of that information.
- Please note that for immigration files, if there is an active enforcement action on the file, the file is considered to be a CBSA file, regardless of which organization originally collected the information. Additionally, if the last action on a **closed** file was an IRPA enforcement action, the file is considered to be a CBSA file. Please see the [CIC-CBSA Information Sharing Annex, section 6](#) for more information on CIC-CBSA governance of immigration information.
- When a CBSA official is aware that the information is available in the public domain, requesters or potential recipients should be directed to the public source, rather than obtaining it from the CBSA. For example:
 - CUSTOMS: Aggregate trade data is available on Industry Canada's web site entitled "Trade Data Online." Industry Canada also has a web site entitled "Canadian Importers Database".
 - NON-CUSTOMS: The FBI provided a confidential file to the CBSA on the gang known as Mara Salvatrucha (also known as MS-13) during a time when that gang was expanding its operations into Canada. Since that time, the FBI has made an updated version of the file publically available on its website. Any requests for that specific file from the CBSA should be redirected to the FBI website as it is now in the public domain and will have a more up-to-date file.

Accuracy: assess the accuracy level of the information.

- Before disclosing any information, CBSA officials should ensure to their satisfaction that the information is free from error in the sense that the information to be exchanged is up-to-date and factual to the best of the CBSA's knowledge.
- Accuracy is particularly important if the disclosure in question is proactive in nature, due to the heightened Charter risk (reasonable expectation of privacy) associated with such disclosures.
- Although there is no definitive formula for determining how accurate information held by the CBSA is, the following guidelines can be applied on a case-by-case basis, keeping in mind that additional rigour is required for proactive disclosures:
 - Communication or use of data may alter the data – confirm the information with its source as necessary. In many cases this may involve cross-referencing the information to be disclosed with CBSA IT systems, but other measures such as reaching out to the organization that initially provided the information may be necessary.
 - If possible, validate the information by comparing it to other sources; ensure that any discrepancies are resolved before making the disclosure.



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- Double-check spelling, especially for foreign-language names, dates, etc.
- If possible/practicable, have a colleague review the material.
- For more information on assessing the accuracy of information, please consult the Data Validity Table in Appendix A of the Operational Guidelines—Ministerial Direction to the CBSA on Information Sharing with Foreign Entities.

Type of Information: customs or personal (non-customs) information?

- CBSA officials need first to determine the type of information being considered for disclosure.
- The type of information will dictate under which Act and provision the information may be disclosed. This principle holds true for disclosures in response to a request or for proactive disclosures.
- Information collected by the CBSA is likely to be either customs information or personal (non-customs) information.
- Customs information includes, but is not limited to, information that is collected for the administration or enforcement of the *Customs Act* or the *Customs Tariff*. Customs information may contain elements that are considered personal information; however, if the personal information is collected for the purposes of the *Customs Act*, it is remains categorized as customs information.
- Personal or “non-customs” information is information that is about an identifiable individual that is recorded in any form as defined in section 3 of the *Privacy Act*. This will include information such as immigration information.
- NOTE: the CBSA does collect information under other Acts, which may, in turn change the nature of the information.
 - For example, information collected for the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) may only be disclosed under provisions in that Act.

Disclosure Provision: disclose under CA 107 and/or PA 8?

- The type of information (i.e., how and for what purpose the information was collected) will generally dictate under which Act and provision the information may be disclosed, regardless of whether the disclosure is in response to a request or is made proactively.
- Customs information may only be disclosed under section 107 of the *Customs Act*.
- Personal (non-customs) information may only be disclosed under section 8 of the *Privacy Act*, unless there is a more restrictive disclosure regime (for example, section 107 of the *Customs Act* is more restrictive than section 8 of the *Privacy Act*).
- For more information on *Security of Canada Information Sharing Act* (SCISA) related disclosures, please see the CBSA Directive on SCISA.
- If an official is of the view that more than one provision in a particular Act may apply for disclosure in a specific case, they are to use the provision which “best fits” the potential disclosure under consideration.
- Similarly, if an official is of the view that more than one Act may apply for disclosure in a particular case, they are to list each Act and use only one provision from each Act for disclosing information.

Can CBSA refuse to disclose information?

- The disclosure of information under section 107 of the *Customs Act*, and subsection 8(2) of the *Privacy Act* is **discretionary**. The concept of discretionary disclosure is almost without exception contained in all legislative authorities for disclosing information.
- Information sharing legislation states that information “may” be disclosed vs. “must” be disclosed.
- This allows officials to exercise their discretion and elect not to disclose, even if the recipient has the authority to collect the information and the CBSA has the authority to disclose it.
- A CBSA official may refuse to disclose information if its disclosure may compromise an ongoing investigation or other CBSA initiated activity such as a compliance verification.
- Even court orders to provide information can be disregarded in very special circumstances through a specific mechanism. Contact the Information Sharing and Collaborative Arrangements Policy (ISCAP) Unit as soon as possible should such a situation or need arise.

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Does REP outweigh the benefit of disclosing?

- Bearing in mind the explanation of key terms earlier in this policy such as Reasonable Expectation of Privacy (REP), Core Biographical Information, and Search & Seizure, and how they work together in determining an overall assessment of REP, a determination must be made as to whether or not, and to what degree the REP of a subject is engaged.
- The question of whether REP outweighs the benefit of disclosing will be assessed on a case-by-case basis.
- If it is not clear that the Government's interest in sharing the information outweighs the subject's REP, it may be beneficial to have an independent third party review the situation in terms of the subject's rights.
- This can be accomplished by requiring the requestor to obtain a court order, search warrant or subpoena; a judge will review the situation before issuing an order.
- NOTE: For disclosures under SCISA, the CBSA **will not ask a requestor to obtain a court order**. Please see the [CBSA Directive on SCISA](#) for more information.

Review the considerations / clause-by-clause guidance in this policy

- Please follow the clause-by-clause guidance in this policy for specific considerations related to specific disclosure authorities.
- NOTE: the disclosure should not conflict with other CBSA policies (e.g. Ministerial Directive on Sharing Information with Foreign Entities) or international obligations (e.g. UNHCR Convention and Protocol Relating to the Status of Refugees, General Agreement on Tariffs and Trade).

Proactive Disclosure Only: minimum disclosure – only enough information to determine further interest

- In order to minimize Charter risks when making a proactive disclosure, it is necessary to confirm whether or not the proposed recipient of the information has an interest in using the information and that it will in fact be put to use.
- The proposed recipient should only receive the minimum amount of information practicable to confirm their interest and the immediate usability of the information.
- If the recipient wishes to know more, then they may follow up with a formal request for information.
- Please see the section on [Proactive Disclosures](#) in this policy for more detailed information.

Minimum Disclosure: only enough information to address the specific request

- The CBSA must provide the minimum amount of information that will allow the recipient to carry out its own objectives (investigation, enforcement action, etc.).
- CBSA officials, not the requestor, make the final determination of what constitutes the minimum necessary amount of information to be disclosed.

Caveats: respect third-party caveats attached to the information

- When the CBSA receives information from a third-party, especially in an intelligence or criminal investigations context, it sometimes comes with caveats attached to it. Such caveats should be observed as the CBSA holds, uses, or further discloses the information.
- Caveats commonly attached to information received by the CBSA include:
 - the requirement to document the source of the information (e.g., in an IT system);
 - restrictions on subsequent disclosure (e.g., information will not be disclosed without first consulting the providing institution); and
 - limitations on the use of the information (e.g., use may be limited to statistical or research purposes).



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Caveats: prepare appropriate caveats regarding recipient use and onward disclosure

- In some situations, it may be necessary for the CBSA to attach caveats to information that it provides to other organizations, especially in an intelligence or criminal investigations context.
- Although it is impossible to predict every possible caveat that the CBSA might attach to outgoing information, there are a several that are commonly used. These include:
 - the requirement to document the source of the information;
 - restrictions on subsequent disclosure (e.g., information will not be disclosed without first consulting and/or advising the CBSA); and
 - limitations on the use of the information (e.g., used only for the purposes for which it was disclosed such as conducting an audit or investigation, or a specific enforcement action, etc.).

PHASE III - MAKING A DISCLOSURE DECISION

Present disclosure recommendation to appropriate authority for approval

- Once the analysis of the proposed disclosure has been completed, and all considerations have been satisfied, the recommendation on whether to disclose or not is made.
- If the recommendation is to disclose, the official making the recommendation packages the minimal necessary information, their rationale for their recommendation, and any necessary caveats.
- This "package" is then presented for approval to the authorized official identified in the Approval Table found in the clause-by-clause guidance for the appropriate disclosure provision.

Obtain approval of disclosure and document decision

- A higher level of approval will often be required for proactive disclosures. This is in addition to the original approval an official would have received to conduct the initial consultation with a potential recipient (i.e.: the depersonalized information discussed in the hypothetical scenario).
- Only the officials identified in the Approval Tables, or those at a higher level to that of the identified officials, may approve the disclosure decision, unless a written agreement specifies other approval processes for a specific situation.
- Any official with appropriate security clearance and in position with duties related to disclosure activity may disclose the information provided they obtain the authorization of an official who is identified in the Approval Tables. For example:
 - an official in a Region wishes to make a Public Interest Disclosure under subparagraph 8(2)(m)(i), however no one in the Region is listed in the Approval Table for that subparagraph.
 - The Region may request that someone listed in the Approval Tables authorize the disclosure, such as the DG, Corporate Secretariat.
 - If the Corporate Secretary authorizes that specific disclosure, then the Region may disclose the information.
- Once the proposed disclosure is approved, the official making the disclosure must conduct the necessary steps to pass the information along to the recipient, and confirm receipt of the information by the recipient as necessary.
- **Important note:** If the disclosure is not approved, it may still be necessary to document this decision and rationale. For example:
 - subsection 8(4) of the *Privacy Act* requires that investigative body requests for information are to be recorded in addition to disclosures; this implies that if a disclosure was not made in response to a request, the decision not to disclose must be documented / recorded. For more information on Investigative Body Designation (IBD) please see the [IBD Toolkit](#).
 - Requests made to the CBSA pursuant to SCISA must be documented, regardless of the CBSA's response to the request.

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PHASE IV—ADMINISTRATION

Record your Information-Sharing Activity

GENERAL

- The recording can be done in various ways, including through recording in a notebook to entering it on an applicable information system. See below for specific directions for various Acts.
- Officials are encouraged to document situations where information was not disclosed, especially when there is a potential that the decision might be contentious or of future importance. Officials should indicate what information was not disclosed as well as the reasons for that decision, on a case-by-case basis.
- The record of the disclosure, or non-disclosure, is to be kept for a minimum of two years after the last administrative action or use of the information. Please consult [Information Management](#) (IM) if you are unsure of how long you are required to keep the record.

CUSTOMS ACT

- As per this policy and section 9 of the *Privacy Act*, CBSA officials must record all disclosures of customs information and all requests for customs information.

SCISA

- All requests made to the CBSA for SCISA related information sharing must be documented, regardless of what disclosure decision was actually taken. For more information on how to record SCISA related requests and disclosures, please see the [CBSA Directive on SCISA](#).

Ongoing Disclosures of a Similar Nature

- Whenever the CBSA discloses information on an ongoing basis with another organization or it becomes evident that a disclosure may lead to a series of similar disclosures to the same client, the CBSA's Information Sharing and Collaborative Arrangements Policy Unit strongly recommends that the Agency enter into a written collaborative arrangement (WCA) with the recipient of the information.
- The WCA serves to ensure consistency is applied when considering and performing disclosures, and reduces the potential of a privacy breach.
- In drafting a new WCA, officials are directed to use the [Policy and Guide for the Management and Development of Written Collaborative Arrangements](#). Please contact the [ISCAP Unit](#) for assistance.



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APPROVAL TABLES

Subsections 107(4) to 107(9) contain tables that identify which CBSA officials have the authority to approve the disclosure of customs information. Subsection 107(12) identifies which officials are authorized to appeal an order to disclose customs information.

Only the officials identified in the approval tables, or those at a higher level to that of the identified officials, may approve the disclosure of customs information. An individual who is not identified in the tables may disclose the information provided they obtain the approval of an official in their program area who is identified in the tables.

RECORDING DISCLOSURES

As per this policy and section 9 of the *Privacy Act*, CBSA officials **must record all disclosures of customs information and all requests for customs information**.

The record of the disclosure or non-disclosure in response to a request will be kept for a minimum of two years after the last administrative use of the information. Please consult [Information Management](#) (IM) if you are unsure of the required length of how long you are required to keep the record.

ONGOING DISCLOSURES

Whenever the CBSA discloses customs information on an ongoing basis with another organization, or it becomes evident that a disclosure may lead to a series of similar disclosures to the same client, the CBSA's Information Sharing and Collaborative Arrangements Policy (ISCAP) Unit strongly recommends that the Agency enter into a written collaborative arrangement (WCA) with the recipient of the information. The WCA serves to ensure consistency is applied when considering and performing disclosures, and reduces the potential of a privacy breach.

In drafting a new WCA, officials are directed to use the [Policy and Guide for the Management and Development of Written Collaborative Arrangements](#).

ENQUIRIES

Please direct any questions about this document to:

Information Sharing and Collaborative Arrangements Policy Unit
Access to Information and Privacy Division, Corporate Secretariat
Corporate Affairs Branch
Vanier Towers
333 North River Road, A-14
Ottawa, ON K1A 0L8

E-mail: [CBSA-ASFC_Info_Sharing-Echange_info](#)

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107(1)

“CUSTOMS INFORMATION”

LEGISLATION

107. (1) The definitions in this subsection apply in this section.

“customs information” means information of any kind and in any form that

- (a) relates to one or more persons and is obtained by or on behalf of
 - (i) the Minister for the purposes of this Act or the *Customs Tariff*; or
 - (ii) the Minister of National Revenue for the purposes of the collection of debts due to Her Majesty under Part V.1;
- (b) is prepared from information described in paragraph (a).

SUMMARY

1. “Customs information” is information that is collected for the administration or enforcement of the *Customs Act* or the *Customs Tariff*.
2. It is also information obtained by or on behalf of the Minister of National Revenue for purposes related to the collection of debts due to the federal government under Part V.1 – Collections – of the *Customs Act*.
3. Any report or document prepared using information collected for the administration or enforcement of the *Customs Act* is also considered customs information.

CONSIDERATIONS

4. The Act under which information is collected determines what type of information it is, what can be done with it, and under what circumstances it may be disclosed. Information collected under the authority of any Act other than the *Customs Act* or the *Customs Tariff* does not meet the definition of customs information.
5. **Customs information may contain “personal information”**. Personal information is defined in section 3 of the *Privacy Act* as “information about an identifiable individual that is recorded in any form”. It includes, but is not limited to, race, origin, colour, religion, age or marital status of the individual, medical, criminal or employment history, financial information, identifying number, fingerprints, iris scans, etc. For example, when an individual declares the goods they are bringing into Canada, they are required to complete the E311 *Declaration Card*. An individual is required to report information such as their name, date of birth and citizenship, etc. on the E311 *Declaration Card*. This information would normally be considered “personal information”. **However, because the information is required to be collected for the administration of the *Customs Act*, it is “customs information”.**
6. CBSA programs that collect or direct the collection of customs information that contain elements of personal information must ensure their program conducts a Privacy Impact Assessment (PIA), in consultation with the Access to Information and Privacy (ATIP) Division, before launching their program. The PIA is to be submitted by the CBSA program area to the Office of the Privacy Commissioner of Canada once it has been reviewed by the ATIP Division.



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7. New CBSA programs that collect personal information must also create and register a Personal Information Bank (PIB), if one does not already exist, with the Treasury Board Secretariat of Canada (TBS) through the ATIP Division.
8. For more information about the policies and procedures that relate to the collection of personal information, PIAs and PIBs, contact the CBSA's Access to Information and Privacy Division.

EXAMPLES

9. Traveller's history contains name, date of birth, citizenship, travel document type and number, date and time of entry into Canada. While this information is often considered personal information, it was collected for the administration and/or enforcement of the *Customs Act*, and as such is customs information that can only be disclosed under section 107.
10. Customs information also includes country of origin, value for duty, classification number, and tariff code, as reported in Form B3-3, *Canada Customs Coding Form*.

NOTES RELATING TO THE DEFINITION OF PERSONAL INFORMATION

- **Customs information containing personal information** is information about an identifiable individual that was collected for customs purposes and can only be disclosed under section 107 of the *Customs Act*, and is therefore not governed by disclosure authorities found in section 8 of the *Privacy Act*. Please note that for customs purposes, the *Customs Act* has expanded the definition of "person" to include corporations or organizations of any kind.
 - For example: Martin is interested in participating in the CBSA's NEXUS program. He is required to complete the NEXUS Application and provide the following information: his nickname, date of birth, place of birth, copy of driver's license, and employment history. While this information is normally considered an individual's personal information, it is "customs information" since it was collected for the purpose of the *Customs Act*.

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107(1)

“OFFICIAL”

LEGISLATION

“official” means a person who

- (a) is or was employed in the service of Her Majesty in right of Canada or of a province;
- (b) occupies or occupied a position of responsibility in the service of Her Majesty in right of Canada or of a province; or
- (c) is or was engaged by or on behalf of Her Majesty in right of Canada or of a province.

SUMMARY

1. An official can be an employee of the CBSA or they can be an employee of a province or of another federal department, agency, crown corporation, etc. This includes someone who once held such a position.

CONSIDERATIONS

2. An employee working for the federal government or a provincial government is considered an “official” as defined in subsection 107(1). This employee is an official performing the lawful duties and responsibilities enabled under any Act of Parliament or Act of a provincial legislature.
3. CBSA employees, including any other federal or provincial Public Service employees who meet the definition of “official”, who have access to customs information and are considering disclosing the information, have a duty to respect the relevant disclosure terms and conditions of section 107 or that official might be committing an offence under subsection 107(2) of the *Customs Act*.
4. Subsections 107(4), (5), (6), (8) and (9) of the *Customs Act* confer on officials the authority to disclose customs information. Subsections 107(6), (7) and (12) of the *Customs Act* confer on the Minister of Public Safety and Emergency Preparedness (who is also an official) certain powers, duties and functions which include the disclosure of customs information. Specific CBSA officials have been delegated to exercise the Minister's powers, duties and functions under subsections 107(6), (7) and (12) under the authority of the *Canada Border Services Agency Act*.
5. The terms and conditions of the most specific and relevant authority related to a proposed disclosure must be respected.

EXAMPLES

6. The following are examples of employees who meet the definition of an “official” because they are employed by and occupy a position of responsibility in the federal or provincial government:
 - Border Services Officer
 - Senior Policy Analyst in the Information Sharing Unit at CBSA National Headquarters
 - Manager
 - Director
 - Provincial Tax Auditor



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107(1)

“SPECIFIED PERSON”

LEGISLATION

“**specified person**” means a person who is employed in the service of, who occupies a position of responsibility in the service of, or who is engaged by or on behalf of, Her Majesty in right of Canada to carry out the provisions of this Act, the *Customs Tariff* or the *Special Import Measures Act*. It includes a person who was formerly so employed or engaged or who formerly occupied such a position.

CONSIDERATIONS

1. The term “specified person” is used in paragraph 107(4)(f) and subsection 107(11) of the *Customs Act*. Both relate to the supervision, evaluation or discipline of individuals who are, or were, employed to administer or enforce the *Customs Act*, the *Customs Tariff*, the *Special Import Measures Act* (SIMA), or Part 2 – *Reporting of Currency and Monetary Instruments* – of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.
2. The term “specified person” relates to CBSA employees, contractors, consultants, or casual employees who administer or enforce any of the legislation cited above as a core part of their responsibilities.
3. The Security and Professional Standards Directorate is responsible for conducting investigations of alleged cases of significant breaches of the *Customs Act*, the *Customs Tariff* or the *Special Import Measures Act* (SIMA) by a “specified person”. They have the authority to request customs information related to the specified person who is being investigated under paragraph 107(4)(f) of the *Customs Act*.

EXAMPLE

4. A CBSA official is alleged to have repeatedly contravened section 107 of the *Customs Act* by disclosing customs information to an external stakeholder that had no legislative authority to receive it. The responsibilities of the official under investigation included the administration and enforcement of the *Customs Act*. That official is considered a “specified person”.

Section 107 Policy



107(2)

RESTRICTIONS ON THE USE AND DISCLOSURE OF CUSTOMS INFORMATION

LEGISLATION

107(2) – Prohibition – provision or use of customs information

Except as authorized under this section, no person shall

- (a) knowingly provide, or allow to be provided, to any person any customs information;
- (b) knowingly allow any person to have access to any customs information; or
- (c) knowingly use customs information.

SUMMARY

1. Customs information can only be used or disclosed for purposes identified in section 107 of the *Customs Act*.

CONSIDERATIONS

2. In order to disclose customs information to another institution, the CBSA must be authorized by section 107 and the recipient must be authorized by legislation to collect it.
3. No other instrument aside from section 107 of the *Customs Act* can be used to authorize the use or disclosure of customs information.
4. Access to custom information within the CBSA must be limited to persons who have a lawful reason to access and use it.
5. It is an offence for any person to knowingly use or disclosure customs information without lawful authority.
6. Before the CBSA discloses customs information, it must ensure the recipient is informed that the information can only be used for the purpose for which it was disclosed. If the recipient wishes to use the information for purposes other than for which it was disclosed, it must obtain the consent of the CBSA and the use must be authorized under section 107.
7. CBSA officials **must record all disclosures of customs information and all requests for customs information**. When no information is disclosed, officials are to document their reason(s) for not complying with the request.

EXAMPLE

8. Paragraph 107(9)(c) does not authorize an official to disclose customs information about a person to another person if the latter has not obtained and submitted the written consent of the person to whom the customs information relates.



Section 107 Policy

107(3)(a)

AUTHORIZED USE OF CUSTOMS INFORMATION TO ADMINISTER AND ENFORCE THE *CUSTOMS ACT*, *CUSTOMS TARIFF, EXCISE ACT, 2001*, *SPECIAL IMPORTS MEASURES ACT* OR PART 2 OF THE *PROCEEDS OF CRIME (MONEY LAUNDERING) AND TERRORIST FINANCING ACT* (PCMLTFA)

LEGISLATION

107(3) – Authorized use of customs information by an official

An official may use customs information

- (a) for the purposes of administering or enforcing this Act, the *Customs Tariff*, the *Excise Act, 2001*, the *Special Imports Measures Act* or Part 2 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* or for any purpose set out in subsection (4), (5) or (7);

SUMMARY

1. Paragraph 107(3)(a) allows officials to use customs information in order to administer and enforce *the Customs Act*, *the Customs Tariff*, *the Excise Act, 2001*, *the Special Imports Measures Act* or Part 2 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* or for any purpose set out in subsection (4), (5) or (7) of the *Customs Act*.

CONSIDERATIONS

2. An official may use customs information for the administration or enforcement of the *Customs Act* and the other legislation listed above. A non-customs official may also use customs information for the purpose for which it was disclosed to them under subsection 107(4), (5) or (7).
3. The statutes listed above are administered by the CBSA either wholly or in part.
4. A person to whom customs information is disclosed may use it solely for the purpose for which it was disclosed.

EXAMPLE

5. When a company reports its imported goods by completing Form B3-3, *Canada Customs Coding Form*, that information becomes "customs information" because it is collected under the authority of the *Customs Act*. Paragraph 107(3)(a) enables the CBSA to use this information to administer and enforce:
 - the *Customs Act* to ensure the goods were properly reported, classified, and valued;
 - the *Customs Tariff* to ensure all duties or taxes payable are properly calculated; and
 - the *Special Import Measures Act* to investigate anti-dumping allegations.



107(3)(b)

AUTHORIZED USE OF CUSTOMS INFORMATION – IMMIGRATION AND REFUGEE PROTECTION ACT (IRPA)

LEGISLATION

107(3) – Authorized use of customs information by an official

An official may use customs information

- (b) for the purposes of exercising the powers or performing the duties and functions of the Minister of Public Safety and Emergency Preparedness under the *Immigration and Refugee Protection Act*, including establishing a person's identity or determining their inadmissibility;

SUMMARY

1. This paragraph allows officials to use customs information for IRPA purposes, such as establishing a person's identity or determining their inadmissibility.

CONSIDERATION

2. Under subsection 4(2) of the IRPA, the responsibilities of the Minister include examinations at ports of entry, arrest, detention and removal, and determinations under subsections 34(2), 35(2) and 37(2) of the IRPA.

EXAMPLE

3. A Border Services Officer administering or enforcing the IRPA may access and use customs information or customs seizure records to corroborate immigration examination information to determine a person's inadmissibility under the IRPA.



Section 107 Policy

107(3)(c)

AUTHORIZED USE OF CUSTOMS INFORMATION TO ENFORCE VARIOUS ACTS

LEGISLATION

107(3) – Authorized use of customs information by an official

An official may use customs information

- (c) for the purposes of any Act or instrument made under it, or any part of such an Act or instrument, that the Governor in Council or Parliament authorizes the Minister, the Agency, the President or an employee of the Agency to enforce, including the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, the *Canada Agricultural Products Act*, the *Feeds Act*, the *Fertilizers Act*, the *Fish Inspection Act*, the *Health of Animals Act*, the *Meat Inspection Act*, the *Plant Protection Act* and the *Seeds Act*.

SUMMARY

1. Paragraph 107(3)(c) allows officials such as the Minister, the President of the CBSA or an employee of the CBSA to use customs information to enforce any Act or related instrument (such as a Regulation) that Cabinet or Parliament authorizes.
2. The statutes that may be enforced include the:
 - *Agriculture and Agri-Food Administrative Monetary Penalties Act*
 - *Canada Agricultural Products Act*
 - *Feeds Act*
 - *Fertilizers Act*
 - *Fish Inspection Act*
 - *Health of Animals Act*
 - *Meat Inspection Act*
 - *Plant Protection Act*
 - *Seeds Act*

CONSIDERATION

3. The mandate of the CBSA includes supporting the administration or enforcement of program legislation which covers the legislation cited in paragraph 2.

EXAMPLES

4. The CBSA may use customs information collected on importations of fertilizers into Canada to enforce paragraph 3(c) of the *Fertilizers Act*, which requires that fertilizers be packaged and labelled as prescribed.
5. The CBSA may use customs information collected on the importation of plants or plant products into Canada to enforce subsection 42(2) of the *Plant Protection Regulations*, which prohibit a person from importing a prohibited item into Canada.

Section 107 Policy



107(4)(a)

PREPARATION FOR CRIMINAL PROCEEDINGS IN CANADA

LEGISLATION

107(4) – Authorized provision of information

An official may provide, allow to be provided or provide access to customs information if the information:

- (a) will be used solely in or to prepare for criminal proceedings commenced under an Act of Parliament;

SUMMARY

1. Paragraph 107(4)(a) allows officials to disclose customs information to crown prosecutors, or other persons, for the purpose of being used in or to prepare solely for criminal proceedings commenced under a federal law.

CONSIDERATIONS

2. The CBSA occasionally receives requests from crown prosecutors or other persons for customs information which they require to use in or to prepare for criminal proceedings commenced under an Act of Parliament. As a discretionary authority to disclose information, paragraph 107(4)(a) allows the CBSA to disclose or decline the disclosure of such information.
3. CBSA officials must verify a criminal proceeding has been commenced. In general, criminal proceedings are commenced by laying of an information before a justice alleging the commission of an offence (i.e. laying of charges by the Crown). If you are unsure that a criminal proceeding has commenced, please contact the Information Sharing and Collaborative Arrangements Policy Unit.
4. Customs information may concern matters such as national security, ongoing investigations or biographical core of personal information. Each request for customs information under paragraph 107(4)(a) must be carefully assessed.
5. Officials are to contact the appropriate Office of Primary Interest (OPI) if requests are received for customs information that may impact a CBSA initiated activity such as a criminal investigation or compliance verification. The appropriate OPI is to be consulted and they will make the determination on whether or not to disclose. If OPIs have concerns about whether or not to comply, they are to consult with the Information Sharing and Collaborative Arrangements Policy Unit for advice.
6. Customs information may be disclosed in writing or under oath in a court of law. When it is disclosed to a requester in writing, customs information must be reviewed and approved by an authorized person prior to its release. In all instances, only relevant customs information may be disclosed in response to any request made under paragraph 107(4)(a).



Section 107 Policy

7. In the context of criminal proceedings, CBSA officials should ensure that the REP and section 8 of the *Charter* are properly assessed and evaluated. Please see the section "Reasonable Expectation of Privacy (REP)" on page 8 of this policy for more detailed information.
8. For information disclosures related to enforcement activities, officials are to ensure they comply with the requirements listed in the CBSA Enforcement Manual, part 9: Investigations and Criminal Proceedings.

EXAMPLE

9. The CBSA may disclose customs information to a crown prosecutor who is prosecuting an individual in a case related to fraud over \$5,000, which is an indictable offence under paragraph 380.(1)(a) of the *Criminal Code*, pursuant to paragraph 107(4)(a) of the *Customs Act*.

APPROVAL TABLE – 107(4)(a)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	n/a
Regions	Operations	All Areas	Superintendent	n/a
Exceptions:				
National Headquarters	Operations	National Border Operations Centre	Supervisor	n/a
National Headquarters	Operations and Programs	Enforcement & Intelligence Directorates	E&I Officer *	n/a
Region	Operations	Enforcement & Intelligence Operations Division	E&I Officer *	n/a
* Please see this policy's definition of "E&I Officer" in <u>Appendix A</u> .				



107(4)(b)

PREPARATION FOR LEGAL PROCEEDINGS RELATING TO TRADE MATTERS, TAX OR DUTY, MONEY LAUNDERING OR TERRORIST FINANCING

LEGISLATION

107(4) – Authorized provision of information

An official may provide, allow to be provided or provide access to customs information if the information:

- (b) will be used solely in or to prepare for any legal proceedings relating to the administration or enforcement of an international agreement relating to trade, this Act, the *Customs Tariff*, the *Special Import Measures Act*, any other Act of Parliament or law of a province that provides for the imposition or collection of a tax or duty or Part 2 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, before
 - (i) a court of record, including a court of record in a jurisdiction outside Canada,
 - (ii) an international organization, or
 - (iii) a dispute settlement panel or an appellate body created under an international agreement relating to trade;

SUMMARY

1. Paragraph 107(4)(b) allows officials to disclose customs information to anyone who will be using it solely in or to prepare for any legal proceedings relating to the administration or enforcement of any international trade agreement, the *Customs Act*, the *Customs Tariff*, *Special Import Measures Act* or any Act of Parliament or province relating to the imposition or collection of tax or duties, or Part 2 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. These legal proceedings must be before a court of record in or outside of Canada, an international organization or a dispute settlement panel or appellate body created under an international trade agreement.

CONSIDERATIONS

2. Paragraph 107(4)(b) gives an official the authority to disclose customs information to use in, or prepare for, any legal proceedings (civil or criminal) relating to the administration or enforcement of:
 - a) an international trade agreement, such as the *North American Free Trade Agreement* (NAFTA), *World Trade Organization* (WTO) Agreements, the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES); or
 - b) the *Customs Act*, the *Customs Tariff*, the *SIMA*, or Part 2 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*; or
 - c) any federal or provincial legislation that provides for the imposition or collection of a tax or duty (which includes the statutes administered by the CRA or by the provinces).



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3. Paragraph 107(4)(b) permits the disclosure of customs information in proceedings before the following institutions:
 - a) a court of record in Canada or a court of record in a jurisdiction outside Canada,
 - b) an international organization such as the United Nations, the World Customs Organization, or
 - c) a dispute settlement panel or an appellate body created under an international agreement relating to trade such as the World Trade Organization.
4. Care must be exercised by those considering releasing information to ensure it would not impact the international trade interests of Canadian firms or the competitive position of the person (company) to whom the information relates.

EXAMPLE

5. Paragraph 107(4)(b) would allow a CBSA official to disclose customs information, such as importer accounting documents, to an official in the Department of Finance Canada or the Department of Foreign Affairs and International Trade, for the purpose of preparing Canada's case before a NAFTA or World Trade Organization (WTO) dispute settlement panel or appellate body in respect of actions taken under the *Special Import Measures Act*.

APPROVAL TABLE – 107(4)(b)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	n/a
Regions	Operations	All Areas	Chief, Manager or Assistant Director, as applicable	n/a
Exceptions:				
National Headquarters	Operations	National Border Operations Centre	Supervisor	n/a
NOTE: for any <i>Special Import Measures Act</i> (SIMA) related information, only a Director (or higher level) in the Trade & Anti-Dumping Programs Directorate may approve the disclosure.				
National Headquarters	Programs	Trade and Anti-Dumping Programs Directorate	Director (for SIMA related disclosures only)	n/a

Section 107 Policy



107(4)(c)

TO ADMINISTER OR ENFORCE THE *CUSTOMS ACT*, THE *CUSTOMS TARIFF*, THE *EXCISE ACT*, THE *EXPORT AND IMPORT PERMITS ACT*, IRPA, THE *SPECIAL IMPORT MEASURES ACT*, AND PART 2 OF THE PCMLTFA

LEGISLATION

107(4) - Authorized provision of information

An official may provide, allow to be provided or provide access to customs information if the information:

- (c) may reasonably be regarded as necessary solely for a purpose relating to the administration or enforcement of this Act, the *Customs Tariff*, the *Excise Act*, the *Export and Import Permits Act*, the *Immigration and Refugee Protection Act*, the *Special Import Measures Act* or Part 2 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* by an official of the Agency;

SUMMARY

1. Paragraph 107(4)(c) allows an official to disclose customs information to any person if the reason for disclosure is to enable an official to administer or enforce the *Customs Act*, the *Customs Tariff*, the *Excise Act*, the *Export and Import Permits Act*, the *Immigration and Refugee Protection Act* (IRPA), the *Special Import Measures Act* or Part 2 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA).

CONSIDERATIONS

2. This paragraph is the lawful authority used to disclose customs information in order to obtain information from someone outside the CBSA for the above listed pieces of legislation. This is the "give-to-get" principle.
3. When an official is disclosing customs information under this provision, the official should only disclose the minimum information necessary to administer or enforce the relevant legislation.
4. Paragraph 107(4)(c) permits the disclosure of customs information to CBSA officials for the administration and enforcement of the *Immigration and Refugee Protection Act*. On the other hand, paragraph 107(5)(j) permits the disclosure of customs information to Citizenship and Immigration Canada officials for the administration and enforcement of the IRPA.

EXAMPLES

5. Customs information provided on the E311 *Declaration Card* relating to the date an individual left and returned to Canada may be used during examinations to determine the admissibility of a permanent resident by establishing whether residency requirements have been met.



Section 107 Policy

6. The CBSA's Trade and Anti-Dumping Programs Directorate is conducting an investigation on an importer under subsection 31(1) of the *Special Import Measures Act*. The investigation concerns alleged injurious dumping and subsidizing of certain metal bar grating of carbon exported from the People's Republic of China. As part of the investigation, Anti-Dumping may need to contact other external partners to collect relevant information on the importer. In order for the external partners to determine whether or not to disclose any information (at their discretion), Anti-Dumping must first disclose a minimum amount of information about the identity of the importer. In essence, Anti-Dumping is disclosing the fact that the importer is being investigated for alleged dumping. Paragraph 107(4)(c) is what allows Anti-Dumping to disclose certain identifying information about the importer to external partners in order to receive the requested information from them.
7. The CBSA is conducting an investigation against an individual for providing false information about an imported good under the *Customs Act*. In order to further its investigation, the CBSA wants to question a number of companies concerning certain transactions with the individual. Under paragraph 107(4)(c), the CBSA is permitted to disclose customs information to the companies for the purpose of collecting additional information to enforce the *Customs Act*.

APPROVAL TABLE – 107(4)(c)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	Manager
Regions	Operations	All Areas	Chief, Manager or Assistant Director, as applicable	Chief, Manager or Assistant Director, as applicable
Exceptions:				
National Headquarters	Comptrollership	Revenue Accounting and Reporting Division	Any Finance Officer *	Any Finance Officer *
* NOTE: only for information relating to currency seizures				
National Headquarters	Operations	National Border Operations Centre	Supervisor	Supervisor
National Headquarters	Operations and Programs	Enforcement & Intelligence Directorates	E&I Officer **	E&I Officer **
Regions	Operations	Enforcement & Intelligence Operations Division	E&I Officer **	E&I Officer **
Regions	Operations	International Region Directorate	Liaison Officer	Liaison Officer
** Please see this policy's definition of "E&I Officer" in Appendix A.				

Section 107 Policy



107(4)(c.1)

**TO ENFORCE THE AGRICULTURE AND AGRI-FOOD ADMINISTRATIVE MONETARY PENALTIES ACT,
THE CANADA AGRICULTURAL PRODUCTS ACT, THE FEEDS ACT,
THE FERTILIZERS ACT, THE FISH INSPECTION ACT, THE HEALTH OF ANIMALS ACT,
THE MEAT INSPECTION ACT, THE PLANT PROTECTION ACT AND THE SEEDS ACT**

LEGISLATION

107(4) - Authorized provision of information

An official may provide, allow to be provided or provide access to customs information if the information:

(c.1) may reasonably be regarded as necessary solely for a purpose relating to the enforcement of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, the *Canada Agricultural Products Act*, the *Feeds Act*, the *Fertilizers Act*, the *Fish Inspection Act*, the *Health of Animals Act*, the *Meat Inspection Act*, the *Plant Protection Act* and the *Seeds Act* by an official of the Agency;

SUMMARY

1. Paragraph 107(4)(c.1) allows officials to disclose customs information to any person if the reason for disclosure is to enable an official to enforce the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, the *Canada Agricultural Products Act*, the *Feeds Act*, the *Fertilizers Act*, the *Fish Inspection Act*, the *Health of Animals Act*, the *Meat Inspection Act*, the *Plant Protection Act* and the *Seeds Act*.

CONSIDERATION

2. This paragraph is the lawful authority used to disclose customs information in order to obtain information from someone outside the CBSA for the above listed pieces of legislation. This is the "give-to-get" principle.
3. The mandate of the CBSA includes supporting the administration or enforcement of program legislation which covers the legislations cited in paragraph 1.
4. When an official is disclosing customs information under this provision, the official should only disclose the minimum information necessary to administer or enforce the relevant legislation.

EXAMPLE

5. The CBSA is conducting an investigation against an importer for providing false information under the *Meat Inspection Act*. In order to further its investigation, the CBSA wants to obtain certain information from a former employee of that importer. Under paragraph 107(4)(c.1), the CBSA is permitted to disclose customs information for the purpose of collecting additional information to enforce the *Meat Inspection Act*.



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APPROVAL TABLE – 107(4)(c.1)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	Manager
Regions	Operations	All Areas	Chief, Manager or Assistant Director, as applicable	Chief, Manager or Assistant Director, as applicable
Exceptions:				
National Headquarters	Operations	National Border Operations Centre	Supervisor	Supervisor
National Headquarters	Operations and Programs	Enforcement & Intelligence Directorates	E&I Officer *	E&I Officer *
* Please see this policy's definition of "E&I Officer" in <u>Appendix A</u> .				

Section 107 Policy



107(4)(c.2)

TO AN OFFICIAL OR CLASS OF OFFICIALS OF THE CANADA REVENUE AGENCY RELATING TO THE ADMINISTRATION OR ENFORCEMENT OF PART V.1 – COLLECTIONS – OF THE *CUSTOMS ACT*

LEGISLATION

107(4) – Authorized provision of information

An official may provide, allow to be provided or provide access to customs information if the information:

- (c.2) may reasonably be regarded as necessary solely for a purpose relating to the administration or enforcement of Part V.1 by an official or a class of officials of the Canada Revenue Agency designated by the Minister of National Revenue;

SUMMARY

1. Paragraph 107(4)(c.2) allows officials to disclose customs information exclusively to an official or class of officials of the Canada Revenue Agency (CRA) designated by the Minister of National Revenue to administer or enforce Part V.1 – Collections – of the *Customs Act*.

CONSIDERATION

2. This paragraph is the lawful authority used to disclose customs information to CRA for the purpose of collection of duties and taxes owed on goods imported/exported, or any other fee or charge issued under the *Customs Act*.

EXAMPLE

3. A tax collection official from the Canada Revenue Agency (CRA) is attempting to collect unpaid duties from an importer to enforce Part V.1 – Collections – of the *Customs Act*. The CRA official needs to send a notice of arrears by mail to the latest known address of the importer but does not have this information. Upon the request of the CRA official, the CBSA may disclose the latest known address of the importer or its authorized representative from its records pursuant to paragraph 107(4)(c.2).

APPROVAL TABLE – 107(4)(c.2)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	Manager
Regions	Operations	All Areas	Chief, Manager or Assistant Director, as applicable	Chief, Manager or Assistant Director, as applicable
Exceptions:				
National Headquarters	Operations	National Border Operations Centre	Supervisor	Supervisor
National Headquarters	Comptrollership	Agency Comptroller Directorate	Any Finance Officer	Any Finance Officer



Section 107 Policy

107(4)(d)

AUTHORIZED USE BY THE ROYAL CANADIAN MOUNTED POLICE

LEGISLATION

107(4) – Authorized provision of information

An official may provide, allow to be provided or provide access to customs information if the information:

- (d) may reasonably be regarded as necessary solely for a purpose relating to the administration or enforcement of this Act, the *Excise Act*, the *Excise Act, 2001* or the *Export and Import Permits Act* by a member of the Royal Canadian Mounted Police;

SUMMARY

1. Paragraph 107(4)(d) authorizes an official to disclose customs information to a member of the Royal Canadian Mounted Police (RCMP) if the information is reasonably regarded as necessary by the RCMP for the administration or enforcement of the *Customs Act*, the *Excise Act*, the *Excise Act, 2001*, or the *Export and Import Permits Act*.

CONSIDERATIONS

2. Customs information may be disclosed to a member of the RCMP for the purpose of administering or enforcing any of the statutes listed in paragraph 107(4)(d).
3. The official considering providing the information must assess whether the request meets the "reasonably regarded as necessary" threshold. In making such an assessment, the CBSA official may wish to consult other CBSA officials and/or the RCMP (to obtain additional information or to clarify existing information to better understand the intended use of the information).

EXAMPLE

4. A Canadian citizen is stopped while entering Canada from the United States along an unmanned border point and is interviewed by the RCMP (the RCMP has responsibility for enforcing the *Customs Act* along the unmanned borders between CBSA ports of entry). To facilitate its administration and enforcement of the *Customs Act*, the RCMP may require customs information such as traveller history. The CBSA may disclose such information under paragraph 107(4)(d) as long as it is satisfied the information is "reasonably regarded as necessary" by the RCMP.

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APPROVAL TABLE – 107(4)(d)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	Director
Regions	Operations	All Areas	Chief or Manager	Assistant Director or Director
Exceptions:				
National Headquarters	Operations	National Border Operations Centre	Supervisor	Manager
National Headquarters	Operations and Programs	Enforcement & Intelligence Directorates	E&I Officer *	Manager
Regions	Operations	International Region Directorate	Liaison Officer	Senior Liaison Officer or Regional Director
* Please see this policy's definition of "E&I Officer" in <u>Appendix A</u> .				



Section 107 Policy

107(4)(e)

PROTECTION OF LIFE, HEALTH, SAFETY, AND THE ENVIRONMENT IN CANADA OR ANOTHER COUNTRY

LEGISLATION

107(4) – Authorized provision of information

An official may provide, allow to be provided or provide access to customs information if the information:

- (e) may reasonably be regarded as necessary solely for a purpose relating to the life, health or safety of an individual or to the environment in Canada or any other country;

SUMMARY

1. Paragraph 107(4)(e) allows officials to disclose customs information in order to protect the life, health or safety of an individual or the environment in Canada or any other country.

CONSIDERATIONS

2. In circumstances where the threat to the life, health or safety of a person or the environment in Canada or in any other country is **not urgent**, officials **must obtain** the approval of the authorizing official before they disclose the customs information. Upon the approval of the authorizing official, an official may disclose customs information to other bodies, such as other government departments and foreign governments, in addition to police or investigative agencies, or any department or agency authorized to respond to these circumstances.
3. As per this policy, proactive disclosures are permissible in **urgent** circumstances where an official has reasonable grounds to believe that the life, health or safety of a person or the environment in Canada or in any other country is in imminent danger and the approval by an authorizing official is not possible (due to time sensitive reasons, for example). Under this situation, customs information is usually disclosed, but not limited to, police or investigative agencies or any department or agency authorized to respond to these circumstances. Officials **must inform** the authorizing official of the disclosure of customs information as soon as possible after its disclosure and document it.
4. Paragraph 107(4)(e) may be used by a management representative designated by a CBSA Vice-President to table customs information related to a workplace incident or accident before the National Health and Safety Policy Committee.

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EXAMPLES

5. An official may disclose customs information about a missing child to the Royal Canadian Mounted Police (RCMP) if the official had reasonable grounds to believe the health and safety of the child was at imminent risk. The official could do so without the approval of the authorizing official if the need for disclosure was time-sensitive.
6. An official encounters a commercial vessel that arrives at a Canadian port flying a yellow quarantine flag (signifying infectious disease). The official may disclose customs information to the local police or the RCMP, as well as local health authorities, without the approval of the authorizing official if the need for disclosure was time-sensitive.
7. Customs information may be disclosed to a foreign government about a shipment of contaminated food identified as having been imported into Canada from that country with the approval of the authorizing official if the need for disclosure was time-sensitive.
8. Customs information may be disclosed to federal or provincial authorities regarding an invasive alien species. A document review of released cargo containers reveals a direct link between those containers and a different cargo container discovered to be infested with emerald ash borer beetles during a customs examination. However, if the authorizing official is not available, the information may be proactively disclosed to provincial or federal authorities. The reasons would have to be documented and the official must inform the authorizing official at the earliest opportunity.
9. During the examination of a traveller at customs secondary, the BSO finds several epi-pens, and is informed by the traveller that they have an extreme allergy to peanuts. Later, while on break and heading to get lunch, the BSO sees medical response personnel around that same traveller, who is lying unconscious on the ground in the airport food court. As there is a very good chance that the traveller's condition is related to their allergy, the BSO could proactively disclose to the medical personnel that the traveller was allergic to peanuts and where to find the epi-pens. The BSO is required to report the disclosure to their chief as soon as possible.

APPROVAL TABLE – 107(4)(e)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	Director
Regions	Operations	All Areas	Chief or Manager	Assistant Director or Director
Exceptions:				
National Headquarters	Operations	National Border Operations Centre	Supervisor	Manager
NOTE: under normal, non-urgent circumstances, the approving officials in this table would apply. However, in urgent or imminent situations, any CBSA official (including BSOs) may disclose customs information without prior approval from an authorizing official. These situations must be handled on a case-by-case basis, and proper recording procedures must be followed as soon as possible following any urgent or proactive disclosure.				



Section 107 Policy

107(4)(f)

SUPERVISION, EVALUATION AND DISCIPLINE OF A “SPECIFIED PERSON”

LEGISLATION

107(4) - Authorized provision of information

An official may provide, allow to be provided or provide access to customs information if the information:

- (f) will be used solely for a purpose relating to the supervision, evaluation or discipline of a specified person by Her Majesty in right of Canada in respect of a period during which the person was employed or engaged by, or occupied a position of responsibility in the service of, Her Majesty in right of Canada to administer or enforce this Act, the *Customs Tariff*, the *Special Import Measures Act*, or Part 2 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* to the extent that the information is relevant for that purpose;

SUMMARY

1. Paragraph 107(4)(f) allows CBSA officials to disclose customs information solely for a purpose related to the supervision, evaluation, or discipline of a “specified person.”

CONSIDERATIONS

2. Under subsection 107(1) of the *Customs Act*, a “specified person” is defined as a person who is or was employed, engaged by, or occupied a position of responsibility in the federal government to administer or enforce the *Customs Act*, the *Customs Tariff*, the *Special Import Measures Act*, or Part 2 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.
3. The CBSA’s *Code of Conduct* provides standards of conduct for all persons employed by the Agency. It is linked to the *Customs Act* because one of the standards of conduct is customs information may only be disclosed as authorized under section 107 of the *Customs Act* and in accordance with the direction provided by these policy guidelines.
4. The misuse, unauthorized disclosure, or allowing access to others of customs information by a specified person, whether that person is on-duty or off-duty, is a contravention of subsection 107(2) of the *Customs Act* and a specified person may be subject to further disciplinary action up to and including termination of employment.
5. The CBSA’s security program is responsible for verifying employee compliance with the legislation, regulations and policies that govern the access and use of information assets under the control of the CBSA.

EXAMPLE

6. A CBSA official knowingly shares their knowledge of an importer who was charged with a customs infraction under the *Customs Act* with a friend who was not authorized to receive the information. A colleague of the CBSA official is aware of the incident and reports it to her Manager. An investigation is being conducted by the CBSA’s Departmental Security Officer (DSO) for a purpose related to the discipline of the official. Under this provision, customs information related to the alleged offence may be disclosed by the DSO to facilitate the conduct of its investigation.

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APPROVAL TABLE – 107(4)(f)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	Director
Regions	Operations	All Areas	Chief or Manager	Assistant Director or Director



Section 107 Policy

107(4)(g)

DISCLOSURES THAT DO NOT DIRECTLY OR INDIRECTLY IDENTIFY A PERSON

LEGISLATION

107(4) – Authorized provision of information

An official may provide, allow to be provided or provide access to customs information if the information:

(g) is reasonably regarded by the official to be information that does not directly or indirectly identify any person;

SUMMARY

1. Paragraph 107(4)(g) allows officials to disclose customs information that does not identify a person, either directly or indirectly.

CONSIDERATIONS

2. Paragraph 107(4)(g) allows officials to disclose statistical information generated from customs information, provided the statistical or aggregate information does not directly or indirectly reveal the identity of the person to whom it relates. On the other hand, customs information that reveals information about an identifiable person or business cannot be disclosed under this authority.
3. Care must be taken when disclosing statistics, especially those that involve a small sample. When information from a small sample could be combined with other information to indirectly identify the person to whom it relates, an official is not to disclose this information.
4. The term “person”, as referenced in paragraph 107(4)(g), is defined in the *Customs Act* as including “an individual, a partnership, a corporation, a trust, the estate of a deceased individual, or a body that is a society, a union, a club, an association, a commission or other organization of any kind”.

EXAMPLES

5. Aggregate customs information may be disclosed to anyone, such as an enforcement body, the media, etc., on the number of seizures made in a given year.
6. Aggregate traveller statistics may be disclosed by CBSA officials to bridge authorities as such information would not identify a person directly or indirectly.

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APPROVAL TABLE – 107(4)(g)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	Manager
Regions	Operations	All Areas	Chief, Manager or Assistant Director, as applicable	Chief, Manager or Assistant Director, as applicable
Exceptions:				
National Headquarters	Operations	National Border Operations Centre	Supervisor	Supervisor



Section 107 Policy

107(4)(h)

NATIONAL SECURITY OR DEFENCE OF CANADA

LEGISLATION

107(4) - Authorized provision of information

An official may provide, allow to be provided or provide access to customs information if the information:

(h) is reasonably regarded by the official to be information relating to the national security or defence of Canada.

SUMMARY

1. Paragraph 107(4)(h) allows officials to disclose customs information to unspecified persons if it is reasonably regarded to be related to the national security or defence of Canada.

CONSIDERATIONS

2. National security and defence of Canada threats include, but are not limited to, those related to: terrorism, proliferation of weapons of mass destruction, foreign espionage, natural disasters, and critical infrastructure vulnerability (such as cyber-attacks).
3. These disclosures are usually to, but not limited to, the Royal Canadian Mounted Police (RCMP), the Canadian Security Intelligence Service (CSIS) and other federal departments, such as Citizenship and Immigration or the Department of National Defence, as well as **any department or agency authorized to respond to these circumstances**.
4. Proactive disclosure by CBSA officials without the approval of the authorizing official is only permitted if the disclosing official has reasonable grounds to believe that an urgent threat to the national security or defence of Canada exists and their authorizing official is not available to approve the disclosure. The official must inform their authorizing official of the disclosure as soon as possible thereafter and document the incident.
5. Officials are advised to consider the person connected to the goods, the goods in question and any related documents, as well as information obtained from other sources, such as systems checks or lookouts, in determining whether there are reasonable grounds to believe a threat to national security exists.
6. CBSA officials must ensure that they understand how the requested information relates to "national security" and be satisfied with the rationale for such a disclosure. Paragraph 107(4)(h) is not intended to be an automatic disclosure process as soon as "national security" is invoked.

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EXAMPLE

7. While conducting the examination of a traveller, a Border Services Officer (BSO) discovers training manuals for handling explosives and biological agents. System checks revealed that the goods were being imported for a person suspected of being a member of a ring involved in terrorist-related activities. The BSO also found a suspected "freeze-dried" virus during a personal search of the traveller who was travelling with false identification. Immigration secondary identified the individual as a known terrorist. Under the circumstance, paragraph 107(4)(h) may be used by the CBSA to alert the appropriate law enforcement agencies. The CBSA could disclose some or all of the information surrounding the case to the RCMP and CSIS under this provision.
8. At secondary in a mail sorting facility, a BSO finds training manuals for creating improvised explosive devices and on the handling of biological agents, along with potential evidence that a known terrorist may be travelling to Canada under false identity. The BSO advises their supervisor and the local Intelligence Officer (IO). The IO could disclose the information relating to the manuals and travel plans to the RCMP and CSIS under 107(4)(h).
9. At secondary at an airport, a BSO finds indications that a terrorist group plans on sinking two freighters in the narrows leading to Vancouver Harbour. The vessels will also have chemical and biological agents planted in them to make clean-up operations harder and more expensive. The CBSA could disclose this information to the RCMP, CSIS, DND and the Coast Guard under 107(4)(h).

APPROVAL TABLE – 107(4)(h)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	Director
Regions	Operations	All Areas	Chief or Manager	Assistant Director or Director
Exceptions:				
National Headquarters	Operations	National Border Operations Centre	Supervisor or E&I Officer *	Manager
National Headquarters	Operations and Programs	Enforcement & Intelligence Directorates	E&I Officer *	Manager
Regions	Operations	International Region Directorate	Liaison Officer	Senior Liaison Officer or Regional Director
<p>NOTE: under normal, non-urgent circumstances, the approving officials in this table would apply. However, in urgent or imminent situations, any CBSA official (including BSOs) may disclose customs information without prior approval from an authorizing official. These situations must be handled on a case-by-case basis, and proper recording procedures must be followed as soon as possible following any urgent or proactive disclosure.</p> <p>* Please see this policy's definition of "E&I Officer" in Appendix A.</p>				



Section 107 Policy

107(4)(i)

SECURITY OF CANADA INFORMATION SHARING ACT (SCISA)

LEGISLATION

107(4) - Authorized provision of information

An official may provide, allow to be provided or provide access to customs information if the information:

- (i) is disclosed in accordance with the *Security of Canada Information Sharing Act*.

SUMMARY

1. Paragraph 107(4)(i) allows officials to disclose customs information as long as it is in accordance with the *Security of Canada Information Sharing Act* (SCISA).

CONSIDERATIONS

2. Officials are to consult the Directive on Information Sharing under the Security of Canada Information Sharing Act for more information.
3. The purpose of paragraph 107(4)(i) is to specifically and clearly allow the CBSA to work within a government-wide framework that provides consistency for sharing information related to the security of Canada to designated recipients.
4. There are 17 federal institutions that can receive information under SCISA and they are listed in Schedule 3 of that Act. Information sharing under the SCISA only permits domestic disclosures of national security related information. **There are no provisions in the SCISA for disclosures to international, provincial or municipal entities.**
5. If CBSA officials receive a request to disclose information under this authority, they must ensure that they understand how the requested information relates to an "activity that undermines the security of Canada" and be satisfied with the rationale for such a disclosure. Paragraph 107(4)(i) is not intended to be an automatic disclosure process as soon as "activity that undermines the security of Canada" is invoked.

EXAMPLES

6. Please see the Directive on Information Sharing under the Security of Canada Information Sharing Act for relevant examples.

APPROVAL TABLE – 107(4)(i)

NOTE: Please see the Directive on Information Sharing under the Security of Canada Information Sharing Act for approval levels regarding information disclosures under SCISA.

Section 107 Policy



107(5)(a)

INVESTIGATIONS AND PROSECUTIONS OF INDICTABLE OFFENCES

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (a) a peace officer having jurisdiction to investigate an alleged offence under any Act of Parliament or of the legislature of a province subject to prosecution by indictment, the Attorney General of Canada and the Attorney General of the province in which proceedings in respect of the alleged offence may be taken, if that official believes on reasonable grounds that the information relates to the alleged offence and will be used in the investigation or prosecution of the alleged offence, solely for those purposes;

SUMMARY

1. Paragraph 107(5)(a) allows an official to disclose customs information to a peace officer, the Attorney General of Canada (federal prosecutors) or the Attorney General of a province (provincial prosecutors) to facilitate the investigation or prosecution of an indictable offence.

CONSIDERATIONS

2. Peace officers are usually only Canadian officials, but there are exceptions. Please see section 2 of the *Criminal Code*.
3. Please note that the *Criminal Code*'s definition of "peace officer" is a non-exhaustive list. Therefore, if a person makes a request under this authority and their position is not identified in the definition of "peace officer" in the *Criminal Code*, the onus is on the requester to demonstrate that there is legislative authority substantiating the fact that their position provides that person with peace officer status within the meaning of the *Criminal Code*.
4. Paragraph 107(5)(a) has tests and conditions that must be satisfied before an official can lawfully disclose customs information to a peace officer or the Attorney General of Canada or of a province:

Requests by Peace Officers

The following four-part test and two conditions must be satisfied. The test is:

- (i) There must be an alleged offence under an Act of Parliament or the legislature of a Province that may be prosecuted by way of indictment;
- (ii) The person receiving the information must be a "peace officer" within the meaning of section 2 of the *Criminal Code*;
- (iii) The "peace officer" receiving the information must have the jurisdiction to investigate the alleged offence; and
- (iv) The disclosing official must believe on reasonable grounds that the information relates to the alleged offence;

The conditions are:

- (i) The information will be used in the investigation of the alleged offence, and
- (ii) The information will be used solely for those purposes.



Section 107 Policy

Requests by the Attorney General of Canada or of a Province

The following four-part test and two conditions must be satisfied. The test is:

- (i) There must be an alleged offence under an Act of Parliament or the legislature of a Province that may be prosecuted by way of indictment;
- (ii) The person receiving the information must be a representative of the Attorney General of Canada or the Attorney General of a Province;
- (iii) The Attorney General's office receiving the information must have the jurisdiction to prosecute the alleged offence; and
- (iv) The disclosing official must believe on reasonable grounds that the information relates to the alleged offence;

The conditions are:

- (i) The information will be used in the prosecution of the alleged offence, and
- (ii) The information will be used solely for those purposes.

5. Prior to disclosing customs information, the appropriate Office of Primary Interest must be contacted to ensure the disclosure will not jeopardize an ongoing investigation or CBSA initiated action. If it is determined that customs information may be released, the official approving the disclosure must inform the recipient in writing that it can only be used for the purpose for which it was disclosed. No secondary use is permitted without the consent of the CBSA.
6. With respect to requests for customs information for use in the investigation of an offence or a prosecution, that may reveal details of a person's lifestyle or personal choices, i.e. information falling within an individual's biographical core of personal information, CBSA officials should consult the Information Sharing and Collaborative Arrangements Policy Unit prior to disclosure. Such consultation is recommended even where the information has been lawfully collected by the CBSA for the purposes of administering or enforcing the *Customs Act* or the *Customs Tariff*. Where there is a substantial likelihood that a person's reasonable expectation of privacy in certain information may outweigh the state's interest in investigating or prosecuting an offence, the CBSA will advise the requesting body that it should obtain a warrant or production order to obtain the requested information.
7. Proactive disclosure is allowed under paragraph 107(5)(a).
8. All requests for customs information must be thoroughly documented.
9. Hybrid offence: under Canadian Law, offences are punishable by indictment or on summary conviction. Some offences allow for the punishment to be by either summary or indictment, depending on the severity of the offence. These types of offences are often referred to as hybrid offences. Since the Crown decides whether to lay summary or indictable charges in these cases, the CBSA treats the request for information for investigations of alleged hybrid offences as the more serious offence (that of indictment) until the Crown lays the charges.

EXAMPLE

10. The RCMP is investigating the sale of counterfeit items in Canada. During the course of its investigation, it has identified individuals who appear to be involved in the importation of counterfeit items. At that point, they approach the CBSA and ask for information related to the importation of goods by those individuals during a specific time period. Under paragraph 107(5)(a), the CBSA may disclose this information to the RCMP.

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APPROVAL TABLE – 107(5)(a)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	Director
Regions	Operations	All Areas	Chief or Manager	Assistant Director or Director
Exceptions:				
National Headquarters	Operations	National Border Operations Centre	Supervisor	Manager
National Headquarters	Operations and Programs	Enforcement & Intelligence Directorates	E&I Officer *	Manager
* Please see this policy's definition of "E&I Officer" in <u>Appendix A</u> .				



Section 107 Policy

107(5)(b)

PERSONS LEGALLY ENTITLED TO CUSTOMS INFORMATION

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (b) a person that is otherwise legally entitled to the information by reason of an Act of Parliament, solely for the purposes for which that person is entitled to the information;

SUMMARY

1. Paragraph 107(5)(b) allows officials to disclose customs information to a person that is legally entitled to the information through an Act of Parliament.

CONSIDERATIONS

2. An Act of Parliament relates to federal legislation only.
3. This provision by itself cannot be used to disclose information; it must be used in conjunction with another piece of legislation that authorizes the disclosure (this is different from the authority to collect). The requesting official or institution must clearly identify which piece of legislation, including section, subsection, paragraph, sub-paragraph, clause or sub-clause, **authorizes the disclosure**.
4. The requester must provide the name of the statute they are administering or enforcing **and** the specific section (or subsection, paragraph, sub-paragraph, clause or sub-clause, if necessary) within the statute that is being administered or enforced. Please note that this information is required to verify the requester's authority to collect the information.
5. Under paragraph 107(5)(b), the CBSA cannot disclose customs information to another federal Public Service institution strictly because the latter has a mandate similar to that of the CBSA.
6. Whenever it becomes evident that a disclosure may lead to a series of similar disclosures to the same client, it is recommended that the CBSA enter into a written collaborative arrangement (WCA) with the recipient of the information.

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EXAMPLES

7. The CBSA may disclose customs information to Statistics Canada, under section 25 of the *Statistics Act*, which authorizes the Chief Statistician of Statistics Canada to receive returns of imports and exports into and from Canada and details of the means of transportation from the Minister of Public Safety and Emergency Preparedness.
8. The CBSA may disclose customs information to Industry Canada, under subsection 16(1) of the *Department of Industry Act*, which authorizes the Minister of Industry to be given copies of invoices and other information collected under the *Customs Act* on goods imported into Canada and exported from Canada for the purpose of carrying out duties and functions of the Minister of Industry under paragraph 6(b) of that Act.
9. The CBSA may disclose customs information to the Privacy Commissioner of Canada, under paragraph 34(1)(f) of the *Privacy Act*, which permits the Privacy Commissioner of Canada to examine or obtain copies of or extracts from books or other records found in any premises for the purposes of conducting an investigation.
10. The CBSA may disclose customs information to the Information Commissioner of Canada, under paragraph 36(1)(f) of the *Access to Information Act*, which permits the Information Commissioner of Canada to examine or obtain copies of or extracts from books or other records found in any premises for the purposes of conducting an investigation.

APPROVAL TABLE – 107(5)(b)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	Director
Regions	Operations	All Areas	Chief or Manager	Assistant Director or Director
Exceptions:				
National Headquarters	Operations	National Border Operations Centre	Supervisor	Manager
National Headquarters	Operations and Programs	Enforcement & Intelligence Directorates	E&I Officer *	Manager
* Please see this policy's definition of "E&I Officer" in <u>Appendix A</u> .				



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107(5)(c)(i), (ii) and (iii)

**FOR PURPOSES RELATED TO PROHIBITED, CONTROLLED OR REGULATED GOODS,
COMMISSION OF AN OFFENCE RELATED TO IMPORTED OR EXPORTED GOODS
AND GOODS THAT MAY BE EVIDENCE OF AN OFFENCE UNDER A FEDERAL ACT OR POLICY**

LEGISLATION

107(5) – Provision of information to certain persons –

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (c) an official solely for the purposes of developing, administering or enforcing an Act of Parliament or developing or implementing a policy related to an Act of Parliament if the information relates to
 - (i) goods, the importation, exportation or in-transit movement of which is or may be prohibited, controlled or regulated under that Act;
 - (ii) a person who that official has reasonable grounds to believe may have committed an offence under that Act in respect of goods imported or exported by that person, or
 - (iii) goods that may be evidence of an offence under that Act;

SUMMARY

1. Subparagraph 107(5)(c)(i) allows officials to disclose customs information to an official for the purpose of developing, administering or enforcing an Act of Parliament or developing or implementing related policy dealing with the importation, exportation and in-transit movement of prohibited, controlled or regulated goods.
2. Subparagraph 107(5)(c)(ii) allows officials to disclose customs information to an official for the purpose of developing, administering or enforcing an Act of Parliament or developing or implementing related policy if the information relates to a person whom the requester has reasonable grounds to believe may have committed an offence concerning goods the person imported or exported under that Act.
3. Subparagraph 107(5)(c)(iii) allows officials to disclose customs information to an official for the purpose of developing, administering or enforcing an Act of Parliament or developing or implementing related policy if the information relates to goods that may be evidence of an offence under that Act.

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CONSIDERATIONS

4. Subparagraphs 107(5)(c)(i), (ii), and (iii) are each meant to be read and interpreted individually.
5. Proactive disclosure of customs information to support the enforcement or administration of other federal Acts may occur if the terms of the authority are met and with the approval of the authorizing official.

Subparagraph 107(5)(c)(i)

6. Goods that are imported, exported or in-transit may be prohibited, controlled or regulated under a federal Act. This provision applies if another federal department or agency requests customs information in order to: (a) assess whether an individual or company who has imported a good has complied with the legislative requirements related to the importation of that good under the Act the other government department or agency is enforcing, or (b) develop policies or further legislation related to that good.
7. The CBSA does not need to administer or enforce a specific Act at the border to disclose customs information to other government departments or agencies for purposes of that Act, as long as the conditions outlined in subparagraph 107(5)(c)(i) are met.
8. Disclosure is usually governed by a written collaborative arrangement (WCA) between the CBSA and another federal department or agency. However, it is not necessary for a WCA to be in place to exercise this provision as long as the conditions outlined in subparagraph 107(5)(c)(i) are met.

Subparagraph 107(5)(c)(ii)

9. The recipient or requester of the information must demonstrate to the CBSA official considering the request that they have reasonable grounds to believe a person may have committed an offence under a federal Act they are administering or enforcing in respect of goods imported or exported.

Subparagraph 107(5)(c)(iii)

10. The information disclosed must relate to goods that may be evidence of an offence under a federal Act.



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EXAMPLES

Subparagraph 107(5)(c)(i)

11. Subparagraph 107(5)(c)(i) would allow customs information related to the importation of a prescription drug that is controlled under the *Food and Drugs Act* (FDA) and Regulations, that is reported on the Form B3-3, *Canada Customs Coding Form*, to be disclosed to Health Canada so that it can enforce the FDA and associated Regulations.
12. Customs information may be disclosed regarding the importation of certain fuels and substances that may be subject to controls or regulation by Environment Canada for the purpose of enforcing the *Canadian Environmental Protection Act* and associated Regulations.

Subparagraph 107(5)(c)(ii)

13. While conducting an examination of a person's luggage, a Border Services Officer discovers opium that was not reported. Under the Schedule to the *Narcotic Control Regulations* (NCR), opium is a controlled substance and may be imported only by dealers with the appropriate license from the Minister of Health. The discovery constitutes reasonable grounds to believe the person may have committed an offence under the *Controlled Drugs and Substances Act*. The CBSA may disclose this information to Health Canada or the RCMP on its own initiative.

Subparagraph 107(5)(c)(iii)

14. Subsection 10(1) of the *Tobacco Act* requires that no person shall import for sale in Canada cigarettes except in a package that contains at least 20 cigarettes. While conducting a search of a commercial passenger bus, a Border Services Officer finds a large suitcase full of "10 cigarette packs". The CBSA may proactively disclose to Health Canada (HC) customs information relating to the imported cigarettes because the discovery may be evidence of an offence under the *Tobacco Act*.

APPROVAL TABLE – 107(5)(c)(i), 107(5)(c)(ii), and 107(5)(c)(iii)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	Director
Regions	Operations	All Areas	Chief or Manager	Assistant Director or Director
Exceptions:				
National Headquarters	Operations	National Border Operations Centre	Supervisor	Manager



107(5)(d)

ADMINISTRATION OR ENFORCEMENT OF PROVINCIAL TAXES

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (d) an official, solely for the purpose of administering or enforcing an Act of the legislature of a province, if the information relates to goods that are subject to import, in-transit or export controls, or taxation upon importation into the province under that Act;

SUMMARY

1. Paragraph 107(5)(d) allows an official to disclose customs information to another official in order to administer or enforce a provincial Act if the information relates to goods that are subject to taxation upon importation into the province or import, in-transit or export controls.

CONSIDERATIONS

2. The CBSA official must be satisfied that the information relates to goods that are subject to import, in transit or export controls or taxation upon importation into the province under a provincial Act.
3. The CBSA official must also be satisfied the information will be used solely for the purpose of administering or enforcing that provincial law.
4. Additional care must be exercised when considering the disclosure of customs information related to the value or origin of goods. In cases where there is reason to suspect that the customs information may have been obtained from a foreign source, the official should confirm that a proposed disclosure of customs information would not be contrary to an international obligation.
5. This authority may be used to disclose information to provincial officials for game export permits, sales tax collection purposes or to support provincial regulatory and licensing regimes, subject to the terms of the relevant legislation and any applicable written collaborative arrangements with the province.

EXAMPLES

6. Information from CBSA documents such as the Form B15, *Casual Goods Accounting Document*, may be disclosed to a provincial official for the purpose of collecting provincial sales tax on goods imported into the province.
7. Customs information may be disclosed to provincial conservation authorities regarding the exportation of wildlife from that province where provincial game export permits are required by provincial law. The provision of customs information under authority of this paragraph will ordinarily be made pursuant to a written collaborative arrangement between the province and the CBSA.



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APPROVAL TABLE – 107(5)(d)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	Director
Regions	Operations	All Areas	Chief or Manager	Assistant Director or Director
Exceptions:				
National Headquarters	Operations	National Border Operations Centre	Supervisor	Manager
National Headquarters	Comptrollership	Agency Comptroller Directorate	Any Finance Officer	Manager



107(5)(e)

ADMINISTRATION OR ENFORCEMENT OF THE GOODS AND SERVICES TAX BY PROVINCES

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (e) an official of a participating province, as defined in subsection 123(1) of the *Excise Tax Act*, or an official of the province of Quebec, if the information relates to the administration or enforcement of Part IX of that Act in that province, solely for that purpose;

SUMMARY

1. Under the authority of paragraph 107(5)(e), customs information may be disclosed to officials of a province participating in the HST scheme or to the Province of Quebec, provided the information relates to the administration or enforcement of Part IX of the *Excise Tax Act* in that province, but solely for that purpose.

CONSIDERATIONS

2. The recipient provincial government official must be from the Province of Quebec or of a participating province, as listed in Schedule VIII – Participating Provinces and Applicable Tax Rates – of the *Excise Tax Act*.
3. The participating provinces, pursuant to Schedule VIII of the *Excise Tax Act* (current to June 20, 2014), are:
 - New Brunswick
 - Newfoundland and Labrador
 - Newfoundland offshore area
 - Nova Scotia
 - Nova Scotia offshore area
 - Ontario
4. The harmonized sales tax (HST) replaced the federal goods and services tax (GST) and the provincial sales tax (PST) in some provinces.

EXAMPLE

5. Information from CBSA documents such as Form B3-3, *Canada Customs Coding Form*, or Form B-2, *Canada Customs – Adjustment Request*, may be disclosed to an official from the Nova Scotia Department of Finance for the purpose of enforcing Part IX of the *Excise Tax Act* on goods imported into its province.



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APPROVAL TABLE – 107(5)(e)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	Director
Regions	Operations	All Areas	Chief or Manager	Assistant Director or Director
Exceptions:				
National Headquarters	Operations	National Border Operations Centre	Supervisor	Manager
National Headquarters	Comptrollership	Agency Comptrollers Directorate	Any Finance Officer	Manager

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107(5)(f)

DEVELOPMENT OR EVALUATION OF FISCAL OR TRADE POLICY OR REMISSION ORDER

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (f) an official solely for the purpose of the formulation or evaluation of fiscal or trade policy or the development of a remission order under an Act of Parliament;

SUMMARY

1. Paragraph 107(5)(f) allows officials to disclose customs information to an official in order to facilitate the development or evaluation of fiscal or trade policy or to develop a remission order.

CONSIDERATIONS

2. The CBSA official must ensure that the information will be used by the recipient solely for the purpose of the formulation or evaluation of fiscal or trade policy, or the development of a remission order under a federal Act of Parliament.
3. Generally the required customs information is requested by a limited number of officials working in the Department of Finance Canada or the Department of Foreign Affairs, Trade and Development. Occasional requests related to trade policy or the development of remission orders are made by Industry Canada or another department or agency.
4. Officials considering the request should inquire why the information cannot be obtained from Statistics Canada or other public sources, as appropriate.

EXAMPLE

5. The Department of Finance Canada is developing a new policy, and potentially regulation concerning the country of origin criteria and markings. They are requesting that the CBSA provide them with information on the importation of specific items, the listed country of origins, and how the items were marked upon entry into Canada. The CBSA could disclose the requested information under 107(5)(f).



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APPROVAL TABLE – 107(5)(f)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	Director
Regions	Operations	All Areas	Chief or Manager	Assistant Director or Director
Exceptions:				
National Headquarters	Operations	National Border Operations Centre	Supervisor	Manager
National Headquarters	Comptrollership	Agency Comptrollers Directorate	Any Finance Officer	Manager
NOTE: for any <i>Special Import Measures Act</i> (SIMA) related information, only a Director (or higher level) in the Trade & Anti-Dumping Programs Directorate may approve the disclosure.				
National Headquarters	Programs	Trade and Anti-Dumping Programs Directorate	Director (for SIMA related disclosures only)	Director (for SIMA related disclosures only)

Section 107 Policy



107(5)(g)

DEBT OWED TO THE CROWN

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (g) an official solely for the purpose of setting off, against any sum of money that may be due to or payable by Her Majesty in right of Canada, a debt due to
 - (i) Her Majesty in right of Canada, or
 - (ii) Her Majesty in right of a province on account of taxes payable to the province if an agreement exists between Canada and the province under which Canada is authorized to collect taxes on behalf of the province;

SUMMARY

1. Paragraphs 107(5)(g)(i) and (ii) allow for the disclosure of customs information to an official in order to set off a debt owed to the federal or provincial Crown. In the case of the latter, a Tax Collection Agreement must exist that authorizes the federal government to collect taxes on behalf of the province.

CONSIDERATION

2. The federal government has a Tax Collection Agreement with every province except Quebec.

EXAMPLES

3. If an individual owes a debt to the federal Crown under the *Income Tax Act* and the federal Crown is liable to pay the individual a drawback for an imported good, the Canada Revenue Agency is permitted to obtain this information from the CBSA to enable it to offset and apply the refund from the drawback to the debt it is owed by the individual pursuant to subparagraph 107(5)(g)(i).
4. If an individual owes a debt to the Saskatchewan Ministry of Finance under the province's *Income Tax Act* and the CBSA is liable to pay the individual a refund for duties paid on an imported good, the Saskatchewan Ministry of Finance is permitted to obtain this information from the CBSA to enable it to offset and apply the refund to the debt it is owed by the individual pursuant to subparagraph 107(5)(g)(ii).



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APPROVAL TABLE – 107(5)(g)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	Director
Regions	Operations	All Areas	Chief or Manager	Assistant Director or Director
Exceptions:				
National Headquarters	Operations	National Border Operations Centre	Supervisor	Manager
NOTE: if a provincial tax collection agreement lists a different level for approving such disclosures, then the level in that agreement will take precedence over the levels listed this policy.				

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107(5)(g.1)

PROVISION OF CUSTOMS INFORMATION TO THE CANADA REVENUE AGENCY

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

(g.1) an official of the Canada Revenue Agency solely for a purpose relating to the administration or enforcement of the *Canada Pension Plan*, the *Employment Insurance Act*, the *Excise Act*, the *Excise Act, 2001*, the *Excise Tax Act* or the *Income Tax Act*;

SUMMARY

- Under paragraph 107(5)(g.1), customs information may be disclosed to an official of the Canada Revenue Agency (CRA) for purposes related to the administration or enforcement of the *Canada Pension Plan*, the *Employment Insurance Act*, the *Excise Act*, the *Excise Act, 2001*, the *Excise Tax Act* or the *Income Tax Act*.

CONSIDERATION

- The CBSA has a comprehensive information sharing Memorandum of Understanding with the CRA that outlines the framework for the disclosure of customs information to the CRA for purposes related to the administration and enforcement of the statutes listed in paragraph 107(5)(g.1).

EXAMPLE

- The CRA makes a request for customs information relating to a specific importer for the purpose of verifying the importer's compliance with the *Income Tax Act*. The CBSA is permitted to disclose this information under paragraph 107(5)(g.1).

APPROVAL TABLE – 107(5)(g.1)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	Director
Regions	Operations	All Areas	Chief or Manager	Assistant Director or Director
Exceptions:				
National Headquarters	Operations	National Border Operations Centre	Supervisor	Manager
NOTE: if a written agreement with CRA lists a different level for approving such disclosures, then the level in that agreement will take precedence over the levels listed this policy.				



Section 107 Policy

107(5)(h)

SPECIAL IMPORT MEASURES ACT PROCEEDINGS

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (h) counsel, as defined in subsection 84(4) of the *Special Import Measures Act*, in accordance with subsection 84(3) of that Act and subject to subsection 84(3.1) of that Act, except that the word “information” in those subsections is to be read as a reference to the words “customs information;”

SUMMARY

1. Paragraph 107(5)(h) allows officials to disclose customs information to counsel in accordance with subsection 84(3) and subsection 84(3.1) of the *Special Import Measures Act* (SIMA) in order to facilitate SIMA proceedings.
2. The definition of “counsel” under subsection 84(4) of the SIMA includes “any person, other than a director, servant or employee of the party, who acts in the proceedings on behalf of the party”.

CONSIDERATIONS

3. The following is to be considered regarding the exercise of this authority and they are all linked to the *Special Import Measures Act*:
 - customs information can only be provided to counsel as defined in subsection 84(4) of the SIMA,
 - disclosure to counsel is in accordance with subsection 84(3) of the SIMA, and
 - disclosure is subject to the limitation outlined in subsection 84(3.1) of the SIMA.
4. Subsection 84(3) states the President of the CBSA is required to provide customs information received under any SIMA proceedings to counsel for SIMA proceedings, upon written request and payment of a fee. The President has the authority to prescribe certain conditions to ensure the customs information provided will not be disclosed to other parties or business competitors without the written consent of the person who submitted the information to the President.
5. The President may choose not to disclose customs information if the President believes it might harm the business or affairs of the person who provided the information and designated it as confidential.

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EXAMPLE

6. A Canadian manufacturer is participating in an investigation being conducted by the CBSA's Trade and Anti-Dumping Programs Directorate under the *Special Import Measures Act*. The manufacturer's legal counsel has requested disclosure of an exhibit consisting of customs information relating to the current proceeding. The CBSA may comply with this request pursuant to paragraph 107(5)(h) of the *Customs Act*, subject to the conditions set out in that provision.

APPROVAL TABLE – 107(5)(h)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	Programs	Trade and Anti-Dumping Programs Directorate	Director	Director



Section 107 Policy

107(5)(i)

PROVISION OF INFORMATION TO EMPLOYMENT & SOCIAL DEVELOPMENT CANADA

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (i) an official of the Department of Employment and Social Development solely for the purpose of administering or enforcing the *Employment Insurance Act*, if the information relates to the movement of people into and out of Canada;

SUMMARY

1. Paragraph 107(5)(i) allows for the disclosure of customs information that relates to the movement of people into or out of Canada to an official from the Department of Employment and Social Development Canada (ESDC) in order to administer or enforce the *Employment Insurance Act*.

CONSIDERATIONS

2. Human Resources and Skills Development Canada (HRSDC) has been renamed to Employment and Social Development Canada (ESDC). Legislative or MOU/WCA references to HRSDC will apply to ESDC.
3. Paragraph 107(5)(i) would allow for the provision of customs information related to travellers coming into or leaving Canada to ESDC for purposes linked to the verification of employment insurance entitlements.
4. There is a Memorandum of Understanding (MOU) that outlines the framework for the disclosure of customs information to ESDC (formerly HRSDC) whereby certain information from the E311 *Declaration Card* is disclosed by the CBSA to ESDC to enable the latter to administer and enforce the *Employment Insurance Act*.

EXAMPLE

5. Customs information from the E311 *Declaration Card* relating to the date an individual left Canada and the CBSA's record of when they re-entered Canada may be disclosed to ESDC under this authority for purposes related to the administration or enforcement of the *Employment Insurance Act*.

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APPROVAL TABLE – 107(5)(i)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	Director
Regions	Operations	All Areas	Chief or Manager	Assistant Director or Director
Exceptions:				
National Headquarters	Operations	National Border Operations Centre	Supervisor	Manager
NOTE: if a written agreement with ESDC (or the former HRSDC) lists a different level for approving such disclosures, then the level in that agreement will take precedence over the levels listed this policy.				



Section 107 Policy

107(5)(j)(i)

PROVISION OF INFORMATION TO CIC FOR CITIZENSHIP AND IMMIGRATION PURPOSES

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (j) an official of the Department of Citizenship and Immigration solely for the purpose of administering or enforcing
 - (i) the *Citizenship Act* or the *Immigration and Refugee Protection Act*, if the information relates to the movement of people into and out of Canada

SUMMARY

1. Paragraph 107(5)(j)(i) allows an official to disclose customs information to a Citizenship and Immigration Canada (CIC) official, as long as the information relates to the movement of people into and out of Canada, and would assist CIC in the administration and enforcement of the *Citizenship Act* or the *Immigration and Refugee Protection Act* (IRPA).

CONSIDERATIONS

2. Customs information that relates to the movement of people into or out of Canada is captured, for example, on the E311 *Declaration Card*.
3. Travel history of individuals relates to the movement of people into or out of Canada, and may be disclosed to CIC, provided that CIC is administering or enforcing the *Citizenship Act* or IRPA.
4. CBSA officials may proactively disclose customs information to CIC, if the disclosing official believes that it will assist CIC in the administration and enforcement of either the *Citizenship Act* or IRPA. The information disclosed must relate to the movement of people into and out of Canada. As with all proactive disclosures, there is a greater chance that REP will be engaged.

EXAMPLE

5. An individual in Vienna, Austria has applied to immigrate to Canada. The CIC Visa Office in Vienna makes a request for the person's travel history, including whether they had ever been convicted under the *Customs Act*. The CIC Visa Office is requesting this information to determine the admissibility of the individual. The CBSA could disclose the requested information under paragraph 107(5)(j)(i).

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APPROVAL TABLE – 107(5)(j)(i)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	Manager
Regions	Operations	All Areas	Chief, Manager or Assistant Director, as applicable	Chief, Manager or Assistant Director, as applicable
Exceptions:				
National Headquarters	Operations	National Border Operations Centre	Supervisor	Supervisor
Regions	Operations	International Region Directorate	Liaison Officer	Liaison Officer



Section 107 Policy

107(5)(j)(ii)

PROVISION OF PASSPORT AND TRAVEL DOCUMENT INFORMATION TO CIC

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (j) an official of the Department of Citizenship and Immigration solely for the purpose of administering or enforcing
- (ii) the law of Canada respecting passports or other travel documents

SUMMARY

1. Paragraph 107(5)(j)(ii) allows an official to disclose customs information to a Citizenship and Immigration Canada (CIC) official, as long as the information relates to passports or other travel documents, and would assist CIC in the administration and enforcement of the Canadian Passport Order or any other Canadian law relating to travel documents.

CONSIDERATIONS

2. The responsibilities of Passport Canada to administer the Canadian Passport Order are now a part of CIC's mandate.
3. Passport and travel document information may be considered customs information when it is collected for "dual use" purposes (i.e. collected for both the enforcement of immigration and customs activities **at the same time**). For example, a passport presented at the border has its number collected for immigration purposes to determine admissibility; the passport number is also collected when the traveler makes a declaration at the border, which is for customs purposes.
4. Travel documents may include items such as, but are not limited to: passports, visas, refugee travel documents, etc.
5. Traveler history of an individual may be provided to CIC for passport purposes.
6. CBSA officials may proactively disclose customs information relating to travel documents to CIC, if the disclosing official believes that it will assist CIC in the administration and enforcement of the Canadian Passport Order. Officials may need to confirm that the travel document information was initially collected for customs purposes and is not solely immigration related. As with all proactive disclosures, there is a greater chance that REP will be engaged.

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EXAMPLE

7. Passport Canada is investigating a subject for potentially abusing their passport. They believe that the subject sold or allowed the use of their passport to someone else. Later, the subject reported their passport lost or stolen, and were issued a new passport. Passport Canada is requesting the subject's travel history on both passport numbers and the name of the subject. The subject's travel history will allow Passport Canada to verify the timings on the use of the passports, which will aid them in their investigation.

APPROVAL TABLE – 107(5)(j)(ii)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	Manager
Regions	Operations	All Areas	Chief, Manager or Assistant Director, as applicable	Chief, Manager or Assistant Director, as applicable
Exceptions:				
National Headquarters	Operations	National Border Operations Centre	Supervisor	Supervisor
Regions	Operations	International Region Directorate	Liaison Officer	Liaison Officer



Section 107 Policy

107(5)(j.1)

PROVISION OF INFORMATION TO THE CANADIAN FOOD INSPECTION AGENCY

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (j.1) an official of the Canadian Food Inspection Agency for the purpose of administering or enforcing any Act referred to in section 11 of the *Canadian Food Inspection Agency Act* if the information relates to the import, export or in-transit movement of goods into or out of Canada;

SUMMARY

1. This provision permits the CBSA to disclose customs information to the Canadian Food Inspection Agency (CFIA) as long as the information relates to the import, export or in-transit movement of goods into or out of Canada and it is needed by the CFIA to administer or enforce any of the Acts listed in section 11 of the *Canadian Food Inspection Agency Act*.

CONSIDERATIONS

2. The Acts listed in section 11 of the *Canadian Food Inspection Agency Act* are current to June 29, 2012:
 - *Agriculture and Agri-Food Administrative Monetary Penalties Act*,
 - *Canada Agricultural Products Act*,
 - *Consumer Packaging and Labelling Act*,
 - *Feeds Act*,
 - *Fertilizers Act*,
 - *Fish Inspection Act*,
 - *Food and Drugs Act*,
 - *Health of Animals Act*,
 - *Meat Inspection Act*,
 - *Plant Breeders' Rights Act*,
 - *Plant Protection Act*, and
 - *Seeds Act*.

EXAMPLE

3. The CFIA is conducting a verification to determine whether a company that imported a particular meat product has complied with the packaging and labelling requirements under the *Meat Inspection Act* and associated *Meat Inspection Regulations*. Under paragraph 107(5)(j.1), customs information related to the quantity and frequency of the importation of the meat product by the importer may be disclosed to the CFIA.

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APPROVAL TABLE – 107(5)(j.1)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	Director
Regions	Operations	All Areas	Chief or Manager	Assistant Director or Director
Exceptions:				
National Headquarters	Corporate Affairs	Recourse Directorate, Appeals Division	Any Official	Manager
National Headquarters	Operations	National Border Operations Centre	Supervisor	Manager



Section 107 Policy

107(5)(k)

PROVISION OF INFORMATION TO FINTRAC

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (k) an official of the Financial Transactions and Reports Analysis Centre of Canada solely for the purpose of administering or enforcing the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*;

SUMMARY

1. This provision permits a CBSA official to disclose customs information to an official of the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) for the purpose of administering or enforcing the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA).

CONSIDERATIONS

2. Section 12, Part II of PCMLTFA requires that the importation or exportation of currency or monetary instruments in amounts equal to or greater than what is set out in the regulations (currently \$10,000 CDN) be reported to FINTRAC. The PCMLTFA regulations specify what information must be reported to FINTRAC. The collection of this information is under the authority of the PCMLTFA, **not** the *Customs Act*, and can only be used or disclosed in accordance with sections 36, 37, and 38.1 of the PCMLTFA.
3. Any information on the PCMLTFA currency report is **not** customs information.
4. However, there is customs information **surrounding** the PCMLTFA report or seizure. This surrounding customs information could include details such as traveller history, customs seizure of other goods, other goods imported, customs enforcement actions, or customs information regarding other individuals travelling with the subject. Paragraph 107(5)(k) is the provision that allows for that surrounding customs information to be disclosed to FINTRAC.

EXAMPLES

5. John Smith, upon arrival in Canada, declares that he has almost \$20,000 in his possession, as part of his customs declaration at the Primary Inspection Line. At secondary, the currency reporting form would be filled out. This is the PCMLTFA information that would be sent to FINTRAC as per subsection 12(5) of the PCMLTFA. Later, FINTRAC requests John Smith's traveller history and information as to whether or not Jane Doe was travelling with John Smith. Jane Doe is suspected of using others as currency mules, such as John Smith. The CBSA could disclose John Smith's traveller history information and the fact of Jane Doe's presence or absence to FINTRAC under paragraph 107(5)(k).

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6. CBSA has noticed a travel pattern on Jane Doe, specifically the amount of currency that she is importing into Canada is repeatedly just under the reporting threshold set out in the PCMLTFA regulations. CBSA records indicate that Jane Doe has been bringing in \$9,900 every two months. The CBSA could proactively disclose the information to FINTRAC under paragraph 107(5)(k), however, there would be a greater chance that REP and section 8 of the *Charter* being engaged.

APPROVAL TABLE – 107(5)(k)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	Director
Regions	Operations	All Areas	Chief or Manager	Assistant Director or Director
Exceptions:				
National Headquarters	Operations	National Border Operations Centre	Supervisor	Manager
National Headquarters	Operations and Programs	Enforcement & Intelligence Directorates	E&I Officer *	Manager
* Please see this policy's definition of "E&I Officer" in <u>Appendix A</u> .				



Section 107 Policy

107(5)(l)

ENTITLEMENTS, LIABILITIES OR OBLIGATIONS UNDER THE *CUSTOMS ACT* OR *CUSTOMS TARIFF*

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (l) a person solely for the purpose of determining any entitlement, liability or obligation of the person under this Act or the *Customs Tariff* including the person's entitlement to any refund, relief, drawback or abatement under those Acts;

SUMMARY

1. Under this provision, customs information may be disclosed to a person if it is going to be used to determine any entitlement, liability or obligation of the person under the *Customs Act* (CA) or the *Customs Tariff* (CT), including their entitlement to any refund, drawback or abatement.

CONSIDERATION

2. Importers or their brokers periodically file information on goods that may result in the payment of more taxes or duties than they are liable for. This provision allows the importer to access their customs information to determine whether the appropriate amounts of duties and taxes were paid on imported goods and to file an adjustment to obtain a refund or correct an improper reporting of imported goods.

EXAMPLE

3. An importer files a request for a summary of all customs information reported on B3-3 forms, *Canada Customs Coding Form*, for the period from June 1, 2009, to June 30, 2010. The importer believes some goods were incorrectly classified and wishes to correct this due to their belief that they are entitled to a refund. The CBSA may disclose the information under paragraph 107(5)(l).

APPROVAL TABLE – 107(5)(l)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	Director
Regions	Operations	All Areas	Chief or Manager	Assistant Director or Director
Exceptions:				
National Headquarters	Corporate Affairs	Recourse Directorate	Any Official	Manager



107(5)(1.1) and (1.2)

FOR VERIFICATION OR REMEDY UNDER THE *COPYRIGHT ACT* AND THE *TRADE-MARKS ACT*

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (1.1) any person who may receive information under [section 44.03](#) or [subsection 44.04\(1\)](#) of the *Copyright Act*, solely for the purposes for which that person is entitled to the information;
- (1.2) any person who may receive information under [section 51.05](#) or [subsection 51.06\(1\)](#) of the *Trade-marks Act*, solely for the purposes for which that person is entitled to the information;

SUMMARY

1. This provision allows an official to provide customs information to the rights holder of a copyright or trademark for the purposes of either: determining whether the importation or exportation of certain goods are prohibited under the *Copyright Act* or the *Trade-marks Act*, or for responding to a rights holder's request for information in their pursuit of a remedy under one of those acts.

CONSIDERATIONS

2. Detailed information and guidance may be found in the [Intellectual Property Rights \(IPR\) Program Toolkit](#), which includes relevant [operational bulletins](#) and [standard operating procedures](#) in relation to new IPR border measures.
3. These paragraphs are the lawful authority used to disclose customs information in order to obtain information from a rights holder to determine whether the importation or exportation of particular goods violates [section 44.01 of the Copyright Act](#) or [section 51.03 of the Trade-marks Act](#). These sections pertain to whether a copyright or trademark are legitimate or have been infringed upon.
4. The goods must be from a commercial shipment that has been detained under [section 101 of the Customs Act](#). This allows officials to detain goods that have been imported (or are about to be exported) until they are satisfied that the goods have been dealt with in accordance with any relevant Act of Parliament or regulation (that prohibits, controls or regulates the movement of such goods into and out of Canada).



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EXAMPLE

5. A BSO examining a container for contraband discovered trademark clothing that they had reason to suspect may be counterfeit. Following the new IPR border measures, the BSO first refers the case to the RCMP to determine if they have an interest in pursuing a case against the importer. The RCMP declines to do so, and as such, the CBSA can now process the shipment under the IPR Program. The BSO contacts the Trade Operation Division to verify whether the rights holder (RH) has a Request for Assistance (RFA) on file with the CBSA. A Senior Officer Trade Compliance (SOTC) confirms that the RH has filed a RFA with the CBSA. The SOTC contacts the RH to provide all relevant information regarding the shipment, and a sample if requested, in order to determine if the detained shipment is legitimate or counterfeit. The RH confirms that the goods are suspected to be counterfeit and indicates that they will be pursuing a remedy against the importer in civil court.

APPROVAL TABLE – 107(5)(1.1) and 107(5)(1.2)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
Regions	Operations	Trade Operation Division	Senior Officer Trade Compliance	Senior Officer Trade Compliance
NOTE: Please see the Standard Operating Procedures found on the Intellectual Property Rights (IPR) Program Toolkit for the most up-to-date approval levels regarding information disclosures made under these provisions.				

Section 107 Policy



107(5)(m)

SUBPOENAS OR WARRANTS ISSUED IN CANADA

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (m) any person, if the information is required to comply with a subpoena or warrant issued or an order made by a court of record in Canada;

SUMMARY

1. Customs information may be disclosed to any person, if the information is required to comply with a subpoena, warrant, or court order issued by a court of record in Canada.

CONSIDERATIONS

2. This paragraph provides the authority for the Agency to disclose information in order to comply with a warrant or subpoena. The subpoena, warrant or court order may order the disclosure of customs information to third parties.
3. The subpoena, warrant or order must be delivered to the CBSA for review. Once delivered, it must be handled expeditiously. Immediate consultation with CBSA management, Legal Services and the ISCAP unit is recommended.
4. Subpoenas are often issued in civil cases where the CBSA may not be a party.
5. Appropriate CBSA program areas are to be consulted when the customs information in question relates to the *Special Import Measures Act*, Advance Passenger Information/Passenger Name Record, or the origin or valuation of goods.
6. The CBSA cannot be compelled to disclose customs information. The *Customs Act* states that the institution “may” disclose, not that it “must” or “shall” disclose. Please note that this **does** apply to court orders, as even court orders **cannot** compel the CBSA to disclose information. There may be reasons the CBSA may choose not to comply with a court order such as (but not limited to): if doing so will put a confidential source at risk, compromise an investigation or the information may involve the CBSA in contractual disputes or in family law matters. See subsections 107(12), (13) and (14) for additional information on how to proceed if the CBSA decides not to disclose customs information in response to a court order.
7. When considering **not** disclosing customs information in response to a subpoena, warrant or court order, consultation is **required** with the appropriate level of CBSA management, Legal Services and the ISCAP unit. Please see subsection 107(12) – (14) of this policy for more detailed information.



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8. If the CBSA considers that an individual may or would likely have a reasonable expectation of privacy relating to a request, it may advise the requester that a subpoena or a judicially authorized warrant MAY be required. By having a judge make the determination on the reasonableness of a request, the CBSA is exercising due diligence in ensuring a requester is accorded the benefit of having a neutral third party determine if the request is reasonable or not.
9. The disclosure of customs information under this authority is broader than criminal matters and can include court orders from family court or lawsuits or orders from other courts of record in Canada such as the Canadian International Trade Tribunal.
10. A court of record includes, but is not limited to, family courts, municipal courts, or a Tribunal at the Immigration and Refugee Board of Canada (IRB) such as the Immigration Appeal Division.

EXAMPLES

11. A police service wishes to obtain information on an individual whom they are investigating for drug trafficking and have made an information request under paragraph 107(5)(a). They intend to use the information in a criminal proceeding against the individual. The CBSA believes that some of the requested information would engage the individual's REP and therefore have asked the police service to obtain a court order. Once a copy of the court order is submitted to support the police service's information request, the CBSA may comply with the request and disclose the information under paragraph 107(5)(m).
12. The Immigration Appeal Division of the IRB orders the disclosure of customs information for their use for the purpose of administering the IRPA pursuant to their "court of record" authority and the application of section 165 and subsection 174(2) of the IRPA. The CBSA may comply with the order under this authority.

APPROVAL TABLE – 107(5)(m)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	n/a
Regions	Operations	All Areas	Chief, Manager or Assistant Director, as applicable	n/a
Exceptions:				
National Headquarters	Operations	National Border Operations Centre	Supervisor	n/a
NOTE: guidance from Legal Services and the ISCAP unit is recommended when considering disclosing information in response to a subpoena, warrant or court order.				

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107(5)(n)

SUBPOENAS AND WARRANTS ISSUED FROM OUTSIDE OF CANADA

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (n) any person, if the information is required to comply with a subpoena or warrant issued or an order made by a court of record outside of Canada, solely for the purposes of criminal proceedings;

SUMMARY

1. This authority permits the CBSA to disclose customs information pursuant to a subpoena, warrant or an order by a foreign court of record where the information is to be used solely for the purposes of a criminal proceeding.

CONSIDERATIONS

2. As per this policy, subpoenas, warrants or orders from foreign jurisdictions are to be discussed with CBSA management, Legal Services and the ISCAP unit without delay.
3. These requests are usually routed through a Mutual Legal Assistance Treaty (MLAT). The procedure is the requesting body submits the MLAT request to the International Assistance Group within the Department of Justice Canada. The latter will then contact the Legal Services Unit (LSU) within the CBSA to coordinate the response. The LSU will contact the appropriate CBSA program area at National Headquarters for documents or records.
4. When REP and/or section 8 of the *Charter* are engaged, there should be judicial oversight of the information sharing activity. For international court orders, the MLAT process provides the judicial oversight, similar in nature to that of a judge, to address any REP or *Charter* issues.
5. This authority is discretionary and the CBSA may choose not to respond to a court order if it is of the view, for example, that the foreign criminal court did not respect due process or if compliance may be outweighed by privacy considerations.
6. When considering **not** disclosing customs information in response to a subpoena, warrant or court order, consultation is **required** with the appropriate level of CBSA management, Legal Services and the ISCAP unit. Please see subsection 107(12)–(14) of this policy for more detailed information.



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EXAMPLE

7. A weapons trafficking trial is being held in the United States and counsel requires customs information relating to the dates an individual entered and left Canada in addition to a record of their importations, exportations and customs enforcement actions. The U.S. counsel obtains a subpoena and presents it to the CBSA in support of its request. The CBSA, in consultation with CBSA management, Legal Services and the ISCAP unit will review the request to determine whether to disclose the information sought under paragraph 107(5)(n).

APPROVAL TABLE – 107(5)(n)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	n/a
Regions	Operations	All Areas	Chief, Manager or Assistant Director, as applicable	n/a
Exceptions:				
National Headquarters	Operations	National Border Operations Centre	Supervisor	n/a
NOTE: consultation with Legal Services and the ISCAP unit is required when considering disclosing information in response to a subpoena, warrant or court order issued from outside of Canada.				

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107(5)(o)

CREATION OF REGULATIONS VIA ORDER-IN-COUNCIL

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (o) prescribed persons or classes of persons, in prescribed circumstances for prescribed purposes, solely for those purposes.

SUMMARY

1. Paragraph 107(5)(o) allows for the creation of regulations to authorize the use or disclosure of customs information in circumstances not contemplated when section 107 came into force or when revisions to section 107 were implemented.

CONSIDERATION

2. Proposed regulations cannot be used to create additional authority where Parliament has already outlined an authority. For example, as there are specific authorities to share information with Citizenship and Immigration Canada, a regulation could not be used to create additional authority; rather, Parliament would have to amend the existing, specific authorities.

EXAMPLE

3. No regulations have been created to date. Proposals for the creation of regulations will be assessed on a case-by-case basis.

APPROVAL TABLE – 107(5)(o)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Director General	n/a



Section 107 Policy

107(6)(a)

PUBLIC INTEREST DISCLOSURE

LEGISLATION

107(6) – Provision of customs information by Minister

The Minister may provide, allow to be provided or provide access to customs information to any person if

- (a) the information may not otherwise be provided, allowed to be provided or provided access to under this section and, in the Minister's opinion, the public interest in providing the information clearly outweighs any invasion of privacy, or any material financial loss or prejudice to the competitive position of the person to whom the information relates, that could result from the provision of the information;

SUMMARY

1. Paragraph 107(6)(a) allows the authorized CBSA official to disclose customs information to anyone if they believe that the public interest in having the information measurably outweighs the privacy rights of an individual or any financial loss to the "person" to whom the information pertains.

CONSIDERATIONS

2. The authority to disclose customs information under paragraph 107(6)(a) remains discretionary and is to be exercised on a case-by-case basis. The approving official must be satisfied that no other provision exists within the framework of section 107 to permit the disclosure of customs information **and** that the facts and circumstances supporting disclosure are extraordinary such that the public's interest in disclosing the information would clearly outweigh any invasion of privacy to an individual, or any material financial loss or prejudice to the competitive position of the person to whom the information relates.
3. The Operating Procedures for Public Interest Disclosures under 107(6)(a) of the Customs Act outline a general process used to assess the interest to the public against the perceived injury to the privacy of the individual or person. It ensures that CBSA officials undertake consultations with necessary stakeholders, conduct the necessary tests, and prepare the CBSA for potentially negative reactions to the disclosure. CBSA officials in a program area considering a public interest disclosure must complete the matrix in this operating procedure and consult with the appropriate stakeholders when considering a disclosure under this provision.
4. "Interest" means that the public must derive some benefit, such as a significant health or safety issue. "Interest" **does not** include information that may be "interesting" to the public, **nor** does simple curiosity on the part of the public constitute a "public interest".
5. A "public" interest may apply to a large group of people, or to just one individual.
6. Note that subsection 2(1) of the Customs Act extends the definition of a "person" beyond that of a single individual to also mean a partnership, a corporation, a trust, the estate of a deceased individual or a body that is a society, a union, a club, an association, a commission or other organization of any kind.

Section 107 Policy



7. If the proposed disclosure of customs information under paragraph 107(6)(a) contains personal information within the meaning of the *Privacy Act*, the Minister must notify the Privacy Commissioner of Canada prior to the disclosure or, if that is not possible, immediately thereafter in writing pursuant to subsection 107(7).
8. After the Privacy Commissioner of Canada has received notification regarding the proposed disclosure of customs information that includes personal information, the Privacy Commissioner may, under subsection 107(7), notify the individual to whom the information relates of the impending disclosure. The Privacy Commissioner has the authority under subsection 34(1) of the *Privacy Act* to conduct an investigation of the proposed disclosure.
9. Section 3 of the *Privacy Act* defines personal information as "information about an identifiable individual that is recorded in any form". Personal information includes, but is not limited to, information relating to the race, national or ethnic origin, colour, religion, age or marital status of an individual; information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved; any identifying number assigned to the individual; the address, fingerprints or blood type, personal opinions or views of the individual; correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence.
10. When customs information containing personal information is disclosed under the public interest provision, the CBSA must include the following in its notification to the Privacy Commissioner:
 - a) the name of the individual(s) involved (and if known, their contact information);
 - b) a description of the information being disclosed, and if appropriate, a copy of the information being disclosed;
 - c) the date that the CBSA intends to disclose the information;
 - d) the rationale for the disclosure and a statement as to why the public interest overrides privacy in this particular instance;
 - e) the identity of the individual(s) or organization(s) to whom the information is being disclosed;
 - f) the manner in which the information is being disclosed; and
 - g) the name and signature of the official approving the disclosure.
11. Paragraph 107(6)(a) should not be used to circumvent the restrictions of existing provisions of section 107 of the *Customs Act*.

EXAMPLES

12. A train crosses the border and derails in Canada. Multiple railcars are breached, spilling their contents into a nearby town's water supply, along with some powdered content which the wind then blows into the town. The residents of the town are very concerned about the chemicals entering their water supply and of inhaling the powder. The CBSA knows what the contents of each of the breached cars are through the original customs declaration. The customs declaration also indicates that the contents pose no short or long term danger to the environment or to the town residents. In order to reassure the residents that there is no danger, the CBSA could make a public interest disclosure under paragraph 107(6)(a) to indicate what the contents were and that they posed no threat to the town. Please note that if the contents of the breached railcars did pose a potential health or environmental danger, the CBSA should disclose the information under paragraph 107(4)(e).



Section 107 Policy

APPROVAL TABLE – 107(6)(a)

Location	Branch / Office	May Approve the Disclosure
National Headquarters	President's Office	President
National Headquarters	Executive Vice-President's Office	Executive Vice-President
National Headquarters	All Branches	Vice-President

Section 107 Policy



107(6)(b)

BENEFIT TO THE INDIVIDUAL

LEGISLATION

107(6) – Provision of customs information by Minister

The Minister may provide, allow to be provided or provide access to customs information to any person if

- (b) in the Minister's opinion, providing the information would clearly benefit the individual to whom the information relates.

SUMMARY

1. Paragraph 107(6)(b) allows the authorized CBSA official to disclose an individual's customs information to anyone if the disclosure would benefit that individual.

CONSIDERATIONS

2. Paragraph 107(6)(b) permits disclosure if it would clearly benefit the individual to whom the customs information relates. There must be a valid and tangible rationale shown, and there should be a positive benefit.
3. It is preferable that the officials seek to obtain consent before considering this provision. If consent is obtained from the individual, then the information could be released under paragraph 107(9)(c). However, given that the consideration of a disclosure under this provision is context-dependent (i.e. case-by-case), there may be reasons why obtaining consent may not be possible or feasible.
4. Paragraph 107(6)(b) must be considered in conjunction with subsection 107(7), Notification of Privacy Commissioner. If the proposed disclosure of customs information under paragraph 107(6)(b) contains personal information within the meaning of the *Privacy Act*, the approving official must notify the Privacy Commissioner of any disclosure of personal information under paragraph 107(6)(b) prior to the disclosure or, if this is not possible, as soon as possible after the disclosure.
5. After the Privacy Commissioner of Canada has received notification regarding the proposed disclosure of customs information that includes personal information, the Privacy Commissioner may, under subsection 107(7), notify the individual to whom the information relates of the impending disclosure. The Privacy Commissioner has the authority under subsection 34(1) of the *Privacy Act* to conduct an investigation of the proposed disclosure.
6. Section 3 of the *Privacy Act* defines personal information as "information about an identifiable individual that is recorded in any form". Personal information includes, but is not limited to, information relating to the race, national or ethnic origin, colour, religion, age or marital status of an individual; information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved; any identifying number assigned to the individual; the address, fingerprints or blood type, personal opinions or views of the individual; correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence.



Section 107 Policy

7. When customs information containing personal information is disclosed under the "benefit to the individual provision", the CBSA must include the following in its notification to the Privacy Commissioner:
- a) the name of the individual(s) involved (and if known, their contact information);
 - b) a description of the information being disclosed, and if appropriate, a copy of the information being disclosed;
 - c) the date that the CBSA intends to disclose the information;
 - d) the rationale for the disclosure and a statement as to why the benefit to the individual overrides privacy in this particular instance;
 - e) the identity of the individual(s) or organization(s) to whom the information is being disclosed;
 - f) the manner in which the information is being disclosed; and
 - g) the name and signature of the official approving the disclosure.

EXAMPLES

8. A lawyer, acting as the executor of the estate of a deceased multi-millionaire, is trying to locate the beneficiary of the estate. The lawyer has exhausted all other methods of locating the beneficiary, and if they are not found by a specific date, the estate will transfer over to a charitable organization. The lawyer knows that the beneficiary resides in Canada and often imports specific goods as an individual to their residence. The CBSA, after establishing that the situation is legitimate, could disclose the address/contact information to the lawyer as a public interest disclosure that would clearly benefit the individual.

APPROVAL TABLE – 107(6)(b)

Location	Branch / Office	May Approve the Disclosure
National Headquarters	President's Office	President
National Headquarters	Executive Vice-President's Office	Executive Vice-President
National Headquarters	All Branches	Vice-President

Section 107 Policy



107(7)

NOTIFICATION OF PRIVACY COMMISSIONER

LEGISLATION

107(7) – Notification of Privacy Commissioner

If customs information provided under subsection (6) is personal information within the meaning of section 3 of the *Privacy Act*, the Minister must notify, in writing, the Privacy Commissioner appointed under section 53 of that Act of any provision of personal information under that subsection before its provision if reasonably practicable or, in any other case, without delay after the provision.

The Privacy Commissioner may, if the Privacy Commissioner considers it appropriate, notify the individual to whom the information relates of the provision of the information.

SUMMARY

1. If the proposed disclosure of customs information under paragraphs 107(6)(a) or (b) would be personal information within the meaning of the *Privacy Act*, the CBSA must notify the Privacy Commissioner of Canada prior to the disclosure or, if that is not possible, immediately thereafter in writing.
2. The Privacy Commissioner may choose to notify the individual to whom the customs information relates of the impending or actual disclosure.

CONSIDERATIONS

3. This provision acts as a safeguard upon use of subsection 107(6) by allowing the independent body responsible for protecting privacy rights in Canada (i.e., the Office of the Privacy Commissioner) the opportunity to consider the proposed disclosure and offer their opinion and recommendations to the institution before the disclosure is made.
4. After receiving notification from the CBSA regarding the proposed disclosure of customs information that includes personal information, the Privacy Commissioner of Canada may, under subsection 107(7), notify the individual to whom the information relates. The Privacy Commissioner has the authority under subsection 34(1) of the *Privacy Act* to conduct an investigation of the proposed disclosure.
5. The Privacy Commissioner may also choose to include their concerns about the disclosure in their annual report to Parliament if the CBSA chooses not to address their concerns before disclosing the information.



Section 107 Policy

6. When customs information containing personal information is disclosed under the public interest provision or the benefit to the individual provision, the CBSA must include the following in its notification to the Privacy Commissioner:
- a) the name of the individual(s) involved (and if known, their contact information);
 - b) a description of the information being disclosed, and if appropriate, a copy of the information being disclosed;
 - c) the date that the CBSA intends to disclose the information;
 - d) the rationale for the disclosure and a statement as to why the public interest overrides privacy in this particular instance or how the disclosure benefits the individual;
 - e) the identity of the individual(s) or organization(s) to whom the information is being disclosed;
 - f) the manner in which the information is being disclosed; and
 - g) the name and signature of the official approving the disclosure.

EXAMPLES

7. Please refer to the example found in the section on paragraph 107(6)(a). Since this disclosure contains no personal information, the public interest disclosure does not need to be reported to the Privacy Commissioner.
8. Please refer to the example found in the section on paragraph 107(6)(b). This example does contain personal information, therefore, the approving official would need to advise the Privacy Commissioner that the CBSA intends to disclose the contact information of the beneficiary to the lawyer acting as the executor of the estate.

REQUIREMENT TO NOTIFY PRIVACY COMMISSIONER – 107(7)

Location	Branch / Office	Notifying Official
National Headquarters	President's Office	President
National Headquarters	Executive Vice-President's Office	Executive Vice-President
National Headquarters	All Branches	Vice-President
NOTE: the CBSA official that must notify the OPC of a disclosure under paragraph 107(6)(a) or 107(6)(b) is the same official that approved that disclosure under one of those provisions.		

Section 107 Policy



107(8)

WRITTEN COLLABORATIVE AGREEMENTS WITH FOREIGN GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS

LEGISLATION

107(8) – Providing customs information to other governments

Customs information may be provided by any person to an official or any other person employed by or representing the government of a foreign state, an international organization established by the governments of states, a community of states, or an institution of any such government or organization, in accordance with an international convention, agreement or other written arrangement between the Government of Canada or an institution of the Government of Canada and the government of the foreign state, the organization, the community or the institution, solely for the purposes set out in that arrangement.

SUMMARY

1. This provision permits the CBSA to disclose customs information to a foreign official of any of the entities listed in subsection 107(8) as long as it is in accordance with an international convention, agreement or other written arrangement between the Government of Canada or an institution of the Government of Canada and the government of the foreign state, the organization, the community or the institution, solely for the purposes set out in that arrangement. The written collaborative arrangement could be an information sharing Memorandum of Understanding, a Customs Mutual Assistance Agreement, or other related instrument.

CONSIDERATIONS

2. Subsection 107(8) permits the CBSA to disclose customs information to foreign participants as long as it is in accordance with the terms and conditions of an international convention, agreement, or other written collaborative arrangement between the Government of Canada or an institution of the Government of Canada and the following participants:
 - the government of a foreign state;
 - an international organization established by the government of states;
 - a community of states; or
 - an institution of any such government or organization.
3. The written collaborative arrangement does not have to deal exclusively with the exchange of customs information, but it must allow for the disclosure or exchange of customs information.

EXAMPLE

4. The U.S. government is investigating a company that is importing large machinery equipment into the United States via Canada. Assistance from the CBSA's Criminal Investigation Unit at Headquarters substantiated the claim that the company was importing the machinery as one piece of equipment into Canada and then disassembling the equipment into two parts and exporting it to the United States as pieces of equipment therefore using a different tariff classification and avoiding paying duties at the time of import to the United States. Under the Canada-U.S. CMAA, the CBSA may disclose this customs information to the United States pursuant to subsection 107(8).



Section 107 Policy

APPROVAL TABLE – 107(8)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	Director
Regions	Operations	All Areas	Chief or Manager	Assistant Director or Director
Exceptions:				
National Headquarters	Operations	National Border Operations Centre	Supervisor	Manager
Regions	Operations	International Region Directorate	Liaison Officer	Senior Liaison Officer or Regional Director
NOTE: for any <i>Special Import Measures Act</i> (SIMA) related information, only a Director (or higher level) in the Trade & Anti-Dumping Programs Directorate may approve the disclosure.				
National Headquarters	Programs	Trade and Anti-Dumping Programs Directorate	Director (for SIMA related disclosures only)	Director (for SIMA related disclosures only)
NOTE: if a written agreement with a foreign government or international organization lists a different level for approving such disclosures, then the level in that agreement will take precedence over the levels listed in this policy.				

Section 107 Policy



107(9)

DISCLOSURE OF CUSTOMS INFORMATION WITH CONSENT

LEGISLATION

107(9) – Disclosure of customs information to certain persons

An official may provide, allow to be provided or provide access to customs information relating to a particular person:

- (a) to that particular person;
- (b) to a person authorized to transact business under this Act or the *Customs Tariff* as that particular person's agent, at the request of the particular person and on receipt of such fee, if any, as is prescribed; and
- (c) with the consent of that particular person, to any other person.

SUMMARY

1. Bearing in mind that the definition of "person" under the *Customs Act* includes, but is not limited to, an individual or a business, subsection 107(9) lists three ways an official is authorized to disclose customs information to an individual or business:
 - (a) to the person himself/herself;
 - (b) to that person's authorized agent or representative; or
 - (c) with the consent of the person, to another person.

CONSIDERATIONS

2. The disclosure of customs information containing personal information under this provision requires that the person provide consent. For the consent to be considered a valid consent, two elements are required: the consent must be **informed**, and the consent must be **voluntary**.
3. Consent must be fully informed. This means that the person must be made aware of the purpose(s) for which the information will be disclosed, and if possible, the implications of the disclosure.
4. Consent must be voluntary. This means that the person must not be coerced or placed under duress in order to grant their consent.
5. Under paragraph 107(9)(a), a CBSA official may disclose customs information directly to the individual to whom the information relates as long as the individual has satisfied the official of their identity.
6. The disclosure of customs information to a person's authorized representative under paragraph 107(9)(b), or to another person under paragraph 107(9)(c), requires that the person (to whom the customs information relates) provide consent to both parties. This consent should be written in most cases; however, in some circumstances the CBSA is prepared to consider disclosure if an individual is physically present with their authorized representative or other person and has provided their verbal consent. For documentation purposes, written consent is always preferable.



Section 107 Policy

7. Although the CBSA does not have a prescribed consent form, a person who chooses to provide written consent to an authorized representative or to another person to gain access to their customs information should include the following information in their letter of consent:
 - a) **Information about the individual or person providing consent**
 - i. Their first name and surname (or company name)
 - ii. Residential / business address
 - iii. Home and / or business telephone number
 - iv. Client identifier (e.g. Business Number, Importer/Exporter Account Number, Carrier Code, Warehouse Operator Locator Code, Account Security Number, etc.)
 - b) **Information about the authorized representative receiving consent under 107(9)(b)**
 - i. Their first name and surname (or company name)
 - ii. Business address
 - iii. Business telephone number
 - iv. Client identifier (e.g. Business Number, Importer/Exporter Account Number, Carrier Code, Warehouse Operator Locator Code, Account Security Number, etc.)
 - c) **Information about the "other person" (other than an authorized representative) receiving consent under 107(9)(c)**
 - i. Their first name and surname
 - ii. Home address
 - iii. Residential telephone number
 - iv. Business telephone number
 - d) **Nature of customs information to be disclosed**
 - i. The person giving consent is to provide a specific description of the customs information to be disclosed to the authorized representative or another person
 - ii. The person giving consent is to provide a beginning date and an end date that relates to the period of disclosure
 - e) **Signature of person providing consent**
 - i. The person providing consent is to sign the letter and provide the authorized representative or other person with the original version of the letter.
8. It is acceptable for the authorized representative or another person to submit a photocopy of the letter of consent to the CBSA with its request. If the CBSA has reason to question the authenticity of the letter of consent, it may ask the authorized representative or other person to submit the original signed letter of consent. If a letter of consent is found to be missing pertinent information, the CBSA will ask the requester to obtain the missing information and re-submit the letter with its request.
9. Even if the CBSA has received a person's consent to disclose their customs information, the CBSA is not automatically obligated to disclose the requested information. The CBSA still reserves the right to exercise its discretion and may choose not to disclose the information. Reasons for choosing not to disclose may include (but are not limited to) sensitive information relating to an on-going investigation or CBSA initiated action such as intelligence or targeting activity against the individual or corporation.

Section 107 Policy



10. Where a member of the public requests access to customs information about a particular traveller or importer, that information cannot be disclosed without the written consent of the traveller or importer, about whom the information relates, pursuant to paragraph 107(9)(c) of the *Customs Act*. In the absence of such consent, the requester should be informed of the reason why their request was declined and advised, as an alternative, that they may make a request under the *Access to Information Act* or the *Privacy Act*, whichever is applicable. Requests under both statutes are reviewed by the CBSA's Access to Information and Privacy (ATIP) Division, Corporate Secretariat Directorate. The ATIP Division will determine if the information requested can be disclosed under the *Access to Information Act* or the *Privacy Act*. The impacted CBSA program area will assist the ATIP Division in determining what information is available and may be disclosed.

EXAMPLES

11. An importer is interested in obtaining customs information related to all goods her company imported between January 1, 2008, and December 31, 2009. She is the sole owner of the company. In her written request, she has satisfied the CBSA of her identity. The CBSA may comply with her request under paragraph 107(9)(a) of the *Customs Act*.
12. Robert is the authorized customs broker for TML Fine Foods (TML). The CBSA has a letter of consent from one of the owners of TML that confirms that Robert is the authorized representative for the company. At the Port of Entry, Robert handles the day-to-day paperwork associated with the importations that TML does. The CBSA may disclose TML's customs information to Robert under paragraph 107(9)(b).
13. Jean-Guy is interested in obtaining customs information on all new vehicles imported by RF Motors from February 1, 2009, to January 31, 2010. In order to gain access to this information, he needs to obtain the written consent of RF Motors. Once this consent is secured and filed with his request, the CBSA may consider disclosure of the information sought under paragraph 107(9)(c) of the *Customs Act*.
14. A Member of Parliament (MP) contacts the CBSA to assist an individual in resolving a complaint. The MP will need to submit a letter of written consent from the individual authorizing the MP to gain access to his or her customs information before the CBSA can consider the request pursuant to paragraph 107(9)(c).

APPROVAL TABLE – 107(9)

Location	Branch	Directorate / Area	May Approve the Disclosure
National Headquarters	All	All Directorates	Any CBSA Official
Region	Operations	All Areas	Any CBSA Official



Section 107 Policy

107(10)

PROVIDING EVIDENCE AT LEGAL PROCEEDINGS

LEGISLATION

107(10) - Evidence

Despite any other Act of Parliament or other law, no official may be required, in connection with any legal proceedings, to give or produce evidence relating to any customs information.

SUMMARY

1. Under subsection 107(10), a CBSA official is not compelled to give or produce evidence relating to any customs information despite any other Act of Parliament or other law or any legal proceedings.

CONSIDERATIONS

2. While several subsections and paragraphs of section 107 allow for the provision of customs information for, or relating to, certain legal proceedings (paragraphs 107(4)(a), 107(4)(b), 107(4)(f), 107(5)(h), 107(5)(m), 107(5)(n), and section 11), and also to the police for some investigative purposes [see paragraph 107(5)(a)], subsection 107(10) provides that, despite any other Act of Parliament or other law, no official may be required to give or produce evidence relating to customs information in connection with any legal proceeding.
3. While subsection 107(10) protects officials from being compelled to disclose customs information, officials are instructed to immediately consult with CBSA management, Legal Services and the ISCAP unit whenever a court order to produce or disclose customs information is served on the CBSA.
4. Occasionally, a court may order the disclosure of customs information that, in the view of the CBSA, should not be disclosed. Subsections 107(12), (13) and (14) provide an appeal process to be followed in such cases that could stay or amend the order.
5. This authority will be exercised on a case-by-case basis.

EXAMPLES

6. Health Canada has commenced legal proceedings against a company for selling a prohibited drug in contravention of the *Food and Drugs Act*. They filed a request for customs information relating to all importations of the drug by the company covering a three year period. Although the CBSA has the authority under subparagraph 107(5)(c)(i) to comply with the request, it is currently conducting an ongoing investigation on that importer, and disclosing could impede that investigation. CBSA may use its discretionary authority and not disclose the requested information under subparagraph 107(5)(c)(i). However, if a court of record were to order the CBSA to produce the information, the CBSA could continue to decline under subsection 107(10), following the appeal process outlined in subsections 107(12) to 107(14), with no risk of the CBSA or CBSA employees being found in contempt of court.
7. The CBSA receives a court order for the production of traveller history information in relation to a child custody dispute between the two parents. The CBSA may challenge that order by exercising the authority in subsection 107(10) to not give or produce the traveller history information in this case since the Agency is not a party to the dispute and generally does not get involved in family law cases.

Section 107 Policy



107(11)

MEASURES TO PROTECT CUSTOMS INFORMATION

LEGISLATION

107(11) – Measures to protect customs information

The person presiding at a legal proceeding relating to the supervision, evaluation or discipline of a specified person may order any measure that is necessary to ensure that customs information is not used or provided to any person for any purpose not relating to that proceeding, including:

- (a) holding a hearing in camera;
- (b) banning the publication of the information;
- (c) concealing the identity of the person to whom the information relates; and
- (d) sealing the records of the proceeding.

SUMMARY

1. Subsection 107(11) provides that the person presiding at a legal proceeding relating to the supervision, evaluation, or discipline of a specified person may order any measure that is necessary to ensure that customs information is not used or provided for any purpose not relating to that proceeding including:
 - (a) holding a hearing in camera;
 - (b) banning the publication of the customs information;
 - (c) concealing the identity of the person to whom the customs information relates; and
 - (d) sealing the records of the proceeding.

CONSIDERATIONS

2. These protective measures may be appropriate, for example, when customs information about persons other than the specified person is considered for disclosure in a legal proceeding.
3. The decision as to whether a legal proceeding will be held regarding a specified person's supervision, evaluation or disciplinary hearing will be determined by the Security and Professional Standards Directorate in consultation with Legal Services and appropriate Offices of Primary Interests.

EXAMPLE

4. The person presiding at a legal proceeding concerning the disciplining of a CBSA employee for importing stolen car parts is considering disclosing the name of the importer who is the recipient of the stolen goods. However, the investigation into the importer is still on-going, and disclosing the importer's name at this stage would likely impede the investigation. Under subsection 107(11), the person presiding at the proceeding may choose to hold the hearing in camera to protect the identity of the importer during the on-going investigation.



Section 107 Policy

107(12) to 107(14)

APPEAL FROM ORDER TO DISCLOSE CUSTOMS INFORMATION, DISPOSITION OF APPEAL, AND STAY

LEGISLATION

107(12) – Appeal from order to disclose customs information

An order or direction that is made in the course of or in connection with any legal proceeding and that requires an official to give or produce evidence relating to customs information may, by notice served on all interested parties, be immediately appealed by the Minister or the Minister of National Revenue, as the case may be, or by the person against whom the order or direction is made:

- (a) to the court of appeal of the province in which the order or direction is made, in the case of an order or direction made by a court or other tribunal established under the laws of the province, whether or not that court or tribunal is exercising a jurisdiction conferred by the laws of Canada;
- (b) to the Federal Court of Appeal, in the case of an order or direction made by a court or other tribunal established under the laws of Canada.

107(13) – Disposition of appeal

The court to which the appeal is taken may allow the appeal and quash the order or direction appealed from or may dismiss the appeal. The rules of practice and procedure from time to time governing appeals to the courts apply, with any modifications that the circumstances require, in respect of the appeal.

107(14) – Stay

An appeal stays the operation of the order or direction appealed from until judgment in the appeal is pronounced.

SUMMARY

1. Occasionally, a court may order the disclosure of customs information that, in the view of the CBSA, should not be disclosed. Subsections 107(12), (13) and (14) provide an appeal process to be followed in such cases that could stay or amend the order.

CONSIDERATIONS

2. The CBSA may choose to appeal an order if it could potentially harm an ongoing investigation or trade interests or if it is unable to practically produce the requested customs information.
3. Section 107(14) allows for a stay of a court order until a judgement in an appeal is pronounced.

Section 107 Policy



EXAMPLE

4. The CBSA receives a court order from a provincial court to produce customs information relating to an individual for a divorce proceeding. Upon consulting internally with various stakeholders, it was found there was an existing CBSA initiated activity against the individual and disclosure of his/her customs information pursuant to the court order would compromise the investigation. The Minister may elect to appeal the court order through the authority of subsection 107(12).

AUTHORITY TO APPEAL ORDER TO DISCLOSE CUSTOMS INFORMATION – 107(12)

Location	Branch	Directorate / Area	May Appeal
National Headquarters	All	All Directorates	Director General
Regions	Operations	All areas	Regional Director General
Exceptions:			
National Headquarters	Comptrollership	Agency Comptroller Directorate	Agency Comptroller
National Headquarters	Comptrollership	Deputy Chief Financial Officer and Resource Management Directorate	Deputy Chief Financial Officer
National Headquarters	Corporate Affairs	Recourse Directorate	Director General, Director and Manager
National Headquarters	Operations	National Border Operations Centre	Director General, Director and Manager
National Headquarters	Operations	Intelligence Operations and Analysis Division	Director
National Headquarters	Operations	Criminal Investigations Division	Director
National Headquarters	Operations	Counter Proliferation Operations Section	Manager
NOTE: consultation with Legal Services and the ISCAP Unit is required when considering appealing the disclosure of customs information in response to a subpoena, warrant or court order.			



Section 107 Policy

107(15)

REGULATIONS

LEGISLATION

107(15) – Regulations

The Governor in Council may make regulations prescribing the circumstances in which fees may be charged for providing or providing access to customs information or making or certifying copies of information and the amount of any such fees.

SUMMARY

1. Under the authority of subsection 107(15), Cabinet may make regulations prescribing the circumstances in which fees may be charged for providing customs information or making copies of information and the amount of any such fees.

EXAMPLE

2. The Governor in Council exercised this provision to create the *Regulations prescribing the circumstances in which fees may be charged for making or certifying copies of documents pursuant to section 108 of the Customs Act and the amount of such fees (Fees for Documents Regulations)*. It became effective on October 16, 1986. At that time, section 108 of the *Customs Act* was the authority to disclose customs information. It was replaced by section 107.

RELATED

- *Fees for Records Regulations* (SOR/86-1028)
- Memorandum D1-3-1, *Fees for Information and Records*.



160(1) and 160(2)

GENERAL OFFENCE AND PUNISHMENT

LEGISLATION

160(1) – General offence and punishment

Every person who contravenes section 11, 12, 13, 15 or 16, subsection 20(1), section 31 or 40, subsection 43(2), 95(1) or (3), 103(3) or 107(2), or section 153, 155, 156 or 159.1, or commits an offence under section 159 or knowingly contravenes an order referred to in subsection 107(11):

- (a) is guilty of an offence punishable on summary conviction and liable to a fine of not more than fifty thousand dollars or to imprisonment for a term not exceeding six months or to both that fine and that imprisonment; or
- (b) is guilty of an indictable offence and liable to a fine of not more than five hundred thousand dollars or to imprisonment for a term not exceeding five years or to both that fine and that imprisonment.

160(2) – Court Order – subsection 43(2)

If a person has been convicted by a court of an offence under subsection (1) for a contravention of subsection 43(2), the court may make any order that it considers appropriate in order to enforce compliance with that subsection.

SUMMARY

1. This provision outlines the offences and penalties for contravening the *Customs Act*, including section 107.

CONSIDERATIONS

2. The Security and Professional Standards Directorate will lead the investigation of cases where CBSA officials are alleged to have contravened section 107. Aside from the monetary and/or imprisonment penalties prescribed in subsection 160(1), the CBSA officials under investigation may be subject to additional disciplinary measures.
3. Each situation will be treated on a case-by-case basis.



Section 107 Policy

APPENDIX A

TERMINOLOGY

Access

- The opportunity to obtain information or view records held by a government institution.

Administer

- To interpret and apply the provisions of an Act or Regulation.

Classes of persons

- A group of individuals who perform similar functions and/or have similar authorities within an organization and have been formally designated as such by their organization.

Court of Record

- A court of record includes, but is not limited to, family courts, municipal courts, or a Tribunal at the Immigration and Refugee Board of Canada (IRB) such as the Immigration Appeal Division. If you are unsure whether a decision-making body is a “court of record,” please contact the Information Sharing and Collaborative Arrangements Policy Unit.

Disclose

- To provide or release information in any form (hard copy, electronic, video).

E&I Officer (Enforcement & Intelligence Officer)

- For the purpose of this Policy, an E&I Officer is a CBSA employee who occupies a position as a Criminal Investigator, an Inland Enforcement Officer, a Hearings Officer, an Intelligence Officer, an Intelligence Analyst or an Intelligence Advisor.

Enforce

- These are the actions carried out to ensure that an Act or Regulation is respected and/or complied with, such as physically deporting or detaining an individual or referring them for a secondary examination, levying a monetary penalty, or reassessing their B3 return, etc.

Federal Government Institution

- As per section 3 of the *Privacy Act*, “government institution” means any department of ministry of state of the Government of Canada, or any body or office, listed in the schedule, and any parent Crown corporation, and any wholly owned subsidiary of such a corporation, within the meaning of section 83 of the *Financial Administration Act*.

Imminent Threat

- This is a credible event with potential negative repercussions that is likely to happen very soon (within 24 hours) and warrants an immediate response and mitigation. It is linked to paragraphs 107(4)(e) and (h) of the *Customs Act*.

Information

- This means data held in any form, such as hardcopies (paper), electronic databases, video recordings, audio recordings, and electronic files on storage devices such as disks or memory sticks.

Peace Officer

- This is any public sector employee or agent whose position is authorized by federal or provincial law to have duties and responsibilities of a peace officer. A non-exhaustive list of “peace officers” can be found in section 2 of the *Criminal Code*.



APPENDIX A (cont'd)

TERMINOLOGY

Person

- This means an individual, a partnership, a corporation, a trust, the estate of a deceased individual or a body that is a society, a union, a club, an association, a commission or other organization of any kind in accordance with subsection 2(1) of the *Customs Act*. Throughout these policy guidelines, the term "person" is used as it is defined in subsection 2(1) of the *Customs Act*.

Personal Information

- Under section 3 of the *Privacy Act*, personal information refers to information about an identifiable individual that is recorded in any form including:
 - (a) information relating to the race, national or ethnic origin, colour, religion, age or marital status of the individual,
 - (b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
 - (c) any identifying number, symbol or other particular assigned to the individual,
 - (d) the address, fingerprints or blood type of the individual,
 - (e) the personal opinions or views of the individual except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual by a government institution or a part of a government institution specified in the regulations,
 - (f) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence,
 - (g) the views or opinions of another individual about the individual,
 - (h) the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual by an institution or a part of an institution referred to in paragraph (e), but excluding the name of the other individual where it appears with the views or opinions of the other individual, and
 - (i) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual.

Personal information does **not** include:

- (j) information about an individual who is or was an officer or employee of a government institution that relates to the position or functions of the individual including,
 - (i) the fact that the individual is or was an officer or employee of the government institution,
 - (ii) the title, business address and telephone number of the individual,
 - (iii) the classification, salary range and responsibilities of the position held by the individual,
 - (iv) the name of the individual on a document prepared by the individual in the course of employment, and
 - (v) the personal opinions or views of the individual given in the course of employment,
- (k) information about an individual who is or was performing services under contract for a government institution that relates to the services performed, including the terms of the contract, the name of the individual and the opinions or views of the individual given in the course of the performance of those services,
- (l) information relating to any discretionary benefit of a financial nature, including the granting of a licence or permit, conferred on an individual, including the name of the individual and the exact nature of the benefit, and
- (m) information about an individual who has been dead for more than twenty years;

Police

- Any body officially designated as a police service such as the Royal Canadian Mounted Police (RCMP), the Ontario Provincial Police (OPP), the Sûreté du Québec, and municipal/county police detachments.



APPENDIX A (cont'd)

TERMINOLOGY

Privacy Impact Assessment (PIA)

- A PIA refers to a comprehensive questionnaire established by the Treasury Board of Canada Secretariat (TBS) to assist Government of Canada institutions in identifying the privacy risks associated with program and service delivery initiatives that involve the collection, use or disclosure of personal information. A PIA helps institutions to ensure that appropriate steps are taken to mitigate any privacy-related risks prior to the commencement of an information collection program or activity.

Proactive disclosure

- This refers to the disclosure of customs or personal information by CBSA officials without first having received a request for the information. It is a highly discretionary authority that is exercised on a case-by-case basis depending on the facts of each situation. A lawful authority must still exist in order for CBSA officials to disclose the information; i.e. if a request for that information were to be received, there would be a lawful authority/method for that information to be disclosed.
- Proactive disclosures have a greater risk of *Charter* infringement. The approving official should exercise the same thought-process they would as if they had received a disclosure request from the institution to which they are contemplating making the proactive disclosure. The onus is on the approving official to ensure that there is a solid rationale for the disclosure.
- Urgent and imminent situations that threaten the life, health or safety of an individual, the national security or defence of Canada or the environment in Canada (or any other country) are examples where this authority may be applied.

Provide

- This refers to releasing or giving information to an institution or individual or making it available to them. The terms disclose and provide are used interchangeably in these policy guidelines.

Specified Person

- For this policy, this refers to a person who is employed in the service of, who occupies a position of responsibility in the service of, or who is engaged by or on behalf of, Her Majesty in right of Canada to carry out the provisions of the *Customs Act*, the *Customs Tariff* or the *Special Import Measures Act* or Part 2 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. It includes a person who was formerly so employed or engaged or who formerly occupied such a position.

Third Party Information

- This is information originating from another institution, organization or individual.

Written Collaborative Arrangement (WCA)

- This is a written arrangement between two or more participants that outlines the terms and conditions under which customs or personal information may be shared in both directions. By way of contrast, an "information collection arrangement" is one in which one participant is disclosing information while the other is collecting it. A WCA can be a Memorandum of Understanding, Statement of Mutual Understanding, Letter of Understanding, Letter of Intent, Letter of Amendment, or an international treaty or convention ratified by Canada. For the most part, WCAs are non-legally binding instruments. However, some are legally binding such as Customs Mutual Assistance Agreements (CMAAs), Mutual Legal Assistance Treaties (MLATs) or trade agreements such as the *General Agreement on Tariffs and Trade (GATT)*. Since the title of the instrument does not determine whether it is legally binding or not, consultation with the ISCAP Unit and Legal Services is recommended.



APPENDIX B

Links to Legislation

[Access to Information Act](#)

[Agriculture and Agri-Food Administrative Monetary Penalties Act](#)

[Canada Agricultural Products Act](#)

[Canada Border Services Agency Act](#)

[Canada Pension Plan](#)

[Canadian Charter of Rights and Freedoms](#)

[Canadian Food Inspection Agency Act](#)

[Citizenship Act](#)

[Consumer Packaging and Labelling Act](#)

[Criminal Code](#)

[Customs Act](#)

[Customs Tariff](#)

[Employment Insurance Act](#)

[Excise Act](#)

[Excise Act, 2001](#)

[Excise Tax Act](#)

[Export and Import Permits Act](#)

[Feeds Act](#)

[Fertilizers Act](#)

[Fish Inspection Act](#)

[Food and Drugs Act](#)

[Health of Animals Act](#)

[Immigration and Refugee Protection Act](#)

[Income Tax Act](#)

[Meat Inspection Act](#)

[Plant Breeders' Rights Act](#)

[Plant Protection Act](#)

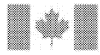
[Privacy Act](#)

[Proceeds of Crime \(Money Laundering\) and Terrorist Financing Act](#)

[Security of Canada Information Sharing Act](#)

[Seeds Act](#)

[Special Import Measures Act](#)



Canada Border
Services Agency

Agence des services
frontaliers du Canada



Policy on the Disclosure of Personal Information:

Section 8 of the *Privacy Act*

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VERSION CONTROL

Version	Author	Action	Date
1.0	CBSA Information Sharing Unit	- Approval	December 17, 2013
2.0	Information Sharing and Collaborative Arrangements Policy Unit	- Added a section on " <u>Proactive Disclosures</u> " - Updated all Approval Tables with Proactive Disclosure column - Added new guidance to <u>8(2)(b) related to SCISA</u>	August 12, 2015
2.1	Information Sharing & Collaborative Arrangements Policy Unit	- Amended the " <u>Questions & Considerations</u> " section	October 1, 2015
2.2	Information Sharing & Collaborative Arrangements Policy Unit	- Updated Introductory section to remove reference to "Advance Passenger Information (API)"	September 15, 2016



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INTRODUCTION

EFFECTIVE DATE

This policy takes effect on December 17, 2013.

HOW TO USE THIS DOCUMENT

Readers are encouraged to familiarize themselves with this policy as a whole before referring to the section that is most relevant to their interest.

The Canada Border Services Agency (CBSA) has two main pieces of legislation which authorize the disclosure of information under its control: section 107 of the *Customs Act* and section 8 of the *Privacy Act*. To help illustrate the similarities and differences between the authorities, each *Privacy Act* disclosure authority listed in this document includes a bullet that indicates if there is a similar disclosure authority for customs information. Details on these similar disclosure authorities from section 107 can be found in the [Policy on the Disclosure of Customs Information](#).

Note: Aside from the above main two pieces of legislation, the CBSA **does** disclose information under other legislation in specific circumstances, such as section 150.1 of the *Immigration and Refugee Protection Act* (IRPA). This policy will not address those other pieces of legislation.

Note: Explanations and examples contained in each part of this document relate exclusively to that part. It should not be assumed that explanations or examples contained in one section apply to another section or different subsection.

PURPOSE AND SCOPE

The purpose of this document is to provide policy guidance to CBSA employees and the general public concerning the interpretation and application of section 8 of the *Privacy Act*. Section 8 outlines the circumstances in which personal information may be disclosed.

“personal information” means information about an identifiable individual that is recorded in any form

This policy does not address the collection, use or retention of personal information. Additionally, this policy does not address the disclosure of customs information, which is governed by section 107 of the *Customs Act*. Please see the [Policy on the Disclosure of Customs Information](#) for details relating to the disclosure of customs information.

It also does not address the provision or use of Passenger Name Record data. Please refer to [Memorandum D1-16-3, Administrative Guidelines for the Provision to Others, Allowing Access to Others and Use of Advance Passenger Information \(API\) and Passenger Name Record \(PNR\) Data](#), for further information.

CBSA employees responsible for approving the disclosure of personal information should read this document in conjunction with other relevant policies and procedures, which are outlined in the “Policies and Guidelines” section.



DEFINITION OF PERSONAL INFORMATION – Section 3 of the *Privacy Act* (current to September 30, 2012)

“**personal information**” means information about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing,

- (a) information relating to the race, national or ethnic origin, colour, religion, age or marital status of the individual,
- (b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual by a government institution or a part of a government institution specified in the regulations,
- (f) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual,
- (h) the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual by an institution or a part of an institution referred to in paragraph (e), but excluding the name of the other individual where it appears with the views or opinions of the other individual, and
- (i) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual,

but, for the purposes of sections 7, 8 and 26 and section 19 of the [Access to Information Act](#), does not include

- (j) information about an individual who is or was an officer or employee of a government institution that relates to the position or functions of the individual including,
 - (i) the fact that the individual is or was an officer or employee of the government institution,
 - (ii) the title, business address and telephone number of the individual,
 - (iii) the classification, salary range and responsibilities of the position held by the individual,
 - (iv) the name of the individual on a document prepared by the individual in the course of employment, and
 - (v) the personal opinions or views of the individual given in the course of employment,
- (k) information about an individual who is or was performing services under contract for a government institution that relates to the services performed, including the terms of the contract, the name of the individual and the opinions or views of the individual given in the course of the performance of those services,
- (l) information relating to any discretionary benefit of a financial nature, including the granting of a licence or permit, conferred on an individual, including the name of the individual and the exact nature of the benefit, and
- (m) information about an individual who has been dead for more than twenty years.



NOTES RELATING TO THE DEFINITION OF PERSONAL INFORMATION

- Please note that each specific data element listed in section 3 of the *Privacy Act* is not necessarily personal information as that data element **alone** may not identify an individual. In order to be considered “personal information” the data element(s) must lead to the identification of an individual. This is usually the case when the data element is linked to other information.
 - For example: a date of birth of “02aug1962” will not usually in itself identify someone, but it may do so in certain circumstances (such as when only one individual on a flight is over 20 years old).
- As per paragraph 3(j) of the *Privacy Act*, Government of Canada employee information relating to their employment (such as name, title, work contact information, pay grade), is not protected as personal information, and is usually disclosed upon request. However, there may be times when that information should not be disclosed. If so, a solid rationale would need to be put forward in order for the information not to be disclosed.
 - For example: tangible safety concerns for the CBSA employee (being known as the **specific** Intel officer responsible for a major narcotics seizure against a violent cartel known for retaliations), not merely potential concerns (being a known Intel officer).
- **Customs information containing personal information** is information about an identifiable individual that was collected for customs purposes and can only be disclosed under section 107 of the *Customs Act*, and is therefore not governed by disclosure authorities found in the *Privacy Act*. Please note that for customs purposes, the *Customs Act* has expanded the definition of “person” to include corporations or organizations of any kind. The use of the term a “person” in this document is in reference to an individual only, not to corporations or other organizations.
 - For example: Martin is interested in participating in the CBSA’s NEXUS program. He is required to complete the NEXUS Application and provide the following information: his nickname, date of birth, place of birth, copy of driver’s license, and employment history. While this information is normally considered an individual’s personal information, since it was collected for the purpose of the *Customs Act*, it is “customs information” and therefore can only be disclosed under section 107 of the *Customs Act*.



POLICIES AND GUIDELINES

The following policies and guidelines are relevant to personal information and information sharing activities at the CBSA. They include, but are not limited to, the following:

CBSA Policies Relating to the Disclosure of Information

- [Policy on the Disclosure of Customs Information, Section 107 of the *Customs Act*](#)
- [Policy on Implementing the Ministerial Direction to the CBSA on Information Sharing with Foreign Entities](#)
- [Operational Guidelines to support the Policy on Implementing the Ministerial Direction to the CBSA on Information Sharing with Foreign Entities](#)
- [Operational Guidelines – Disclosure of Information for Enforcement and Intelligence](#)
- [Operating Procedures for Public Interest Disclosures under 8\(2\)\(m\)\(i\) of the *Privacy Act*](#)

Related CBSA Policies

- [Policy and Guide for the Management and Development of Written Collaborative Arrangements \(WCAs\)](#)
- [CBSA Information Management Policy](#)
- [Records Retention and Disposition – Policy](#)
- [Safeguarding of Original Written Collaborative Arrangements – Policy](#)
- [Policy on the Protection of Classified and Protected Information and Assets outside the Workplace](#)

CBSA Instruments

- [Guidelines for the Classification and Handling of Information Assets](#)
- [Inventory of Written Collaborative Arrangements](#)
- [CBSA Infosource](#)
- [CBSA *Privacy Act* Delegation Order](#)

Other Departmental Instruments

- [Department of Foreign Affairs and International Trade \(DFAIT\) Policy on Tabling of Treaties in Parliament](#)
- [Canada Treaty Information](#)

Treasury Board of Canada Secretariat (TBS) Policies

- [TBS Policy on Information Management](#)
- [TBS Privacy and Data Protection Policies and Publications](#)
- [TBS Guidance on Preparing Information Sharing Agreements Involving Personal Information](#) (July 2010)
- [Directive on Privacy Practices](#) (April 2010)
- [Guidelines for Privacy Breaches](#) (2007)



STATUTES AND POLICIES THAT IMPACT THE DISCLOSURE OF PERSONAL INFORMATION

The main federal statutes and policies that have an impact on how personal information and related records are to be disclosed are:

- The *Canadian Charter of Rights and Freedoms* (the *Charter*) was signed into law on April 17, 1982. It bestows civil rights on everyone present in Canada and protects their personal information held by the Government of Canada, including information held in Canadian embassies. All Canadian legislation must be interpreted in light of the *Charter* and related jurisprudence. Several rulings of the Supreme Court of Canada have identified an individual's **reasonable expectation of privacy** as a fundamental right under the *Charter* and have issued rulings that impact how federal institutions collect and manage personal information. For example, the Supreme Court of Canada has stated that information sharing is the equivalent to "search and seizure", and thus all information sharing must be compliant with section 8 of the *Charter*.
- The *Access to Information Act* provides individuals with the right to access records under the control of federal institutions.
- The *Privacy Act* provides individuals with the right to access their own records under the control of federal institutions. It also contains provisions relating to the collection, use, disclosure, retention, and disposal of personal information. Any disclosures of information under the *Privacy Act* must be specifically authorized by one of the provisions listed in section 8.
- The disclosure of information is subject to Treasury Board policies and guidelines such as the *Directive on Privacy Practices* (April 2010), *Guidance on Preparing Information Sharing Agreements Involving Personal Information* (July 2010) and *Guidelines for Privacy Breaches* (2007).



KEY CONCEPTS ABOUT INFORMATION

The Supreme Court of Canada (SCC) has identified a number of key concepts relating to the collection and disclosure of personal information. They are:

- biographical core of personal information
- search and seizure (of information)
- reasonable expectation of privacy

These concepts work together to define and protect an individual's privacy rights. However, the privacy protections afforded by applying these concepts will vary according to context. Please note that the examples provided in the following sections are **not** intended to be comprehensive, but to serve as introductions to these concepts.

Biographical Core of Personal Information

The SCC has identified that some information collected by federal government institutions may be described or categorized as an individual's **biographical core of personal information**. This biographical core of personal information is defined as information which tends to reveal intimate details of the lifestyle and personal choices of the individual that the individual normally **does not** expect the government to collect; additionally, if the government has a lawful authority, such as in the border context, and the need to collect that information, the individual would not expect the government to further disseminate that information.

The SCC has also indicated that what is defined as the biographical core of personal information will vary according to context. In other words, for some situations, a particular piece of information may be considered part of an individual's biographical core of personal information, while in different circumstances the same information might not be categorized as such.

For example, an individual's sexual orientation is normally considered part of their biographical core of personal information; normally there would be little need for the government to collect this information. However, if an individual was sponsoring their same-sex spouse or partner for permanent resident status, then there would be a need to collect and/or disclose this information, since the immigration context would require it in order to process the individual's file.

Search & Seizure

In administering and enforcing legislation, the CBSA collects and discloses a significant amount of information, including personal information, some of which may fall within an individual's biographical core of personal information.

The collection and disclosure of personal information is considered a form of "**search and seizure**", as confirmed by SCC jurisprudence. Section 8 guarantees the right to be free from **unreasonable** search and seizure and protects a reasonable expectation of privacy. Therefore, when the information collected or disclosed attracts a reasonable expectation of privacy, section 8 of the *Charter* applies.

Reasonable Expectation of Privacy (REP)

The right to a "**reasonable expectation of privacy**" has been recognized by Supreme Court of Canada. This right is fundamentally linked to section 8 of the *Charter* which states that everyone has the right to be secure against unreasonable search and seizure.

An individual's REP is "engaged" when they could reasonably believe that their privacy rights outweigh the state's interest in collecting or disclosing their information. Any information that is lawfully collected by federal government institutions that may be categorized as part of an individual's biographical core of personal information is likely to engage that individual's reasonable expectation of privacy.



However, what is considered a “reasonable” expectation of privacy will depend on the context of the search and seizure (i.e. when and how the information is collected or disclosed and for what purpose). Potentially, **any** piece of personal information could engage an individual’s REP. The reasonableness of a search and seizure is determined on a case-by-case basis, by balancing the state’s need for the information against the individual’s interest and expectations of privacy under a given set of circumstances. Consider the following two examples:

Example 1: A traveller crosses the border into Canada. The Border Services Officer asks the traveller a series of questions regarding the nature of their trip, how long they were gone, the value of the goods that they are bringing back, etc. The traveller may be sent to secondary for an examination of their goods. The traveller may be escorted into a private room for a personal search (i.e. full disrobement).

Example 2: A driver is pulled over by the police due to a tail light not working. There are no illegal items in plain sight in the vehicle (such as drugs or firearms). The police constable proceeds to ask the driver a series of questions regarding the nature of their trip, how long they were gone, the value of any goods that they had purchased, etc. The constable then searches the vehicle. As a final step, the constable performs a personal search on the driver.

In both of the examples, the same activities took place, i.e.: questioning, the search of goods and a personal search. However the circumstances surrounding the activity play a significant role in determining whether the individual’s REP is engaged. In example 1, there is a lower expectation of privacy when crossing an international border, as recognized by the SCC, so the REP of the traveller is not engaged since they know, or should have known, that these activities may happen when they cross an international border. However, in example 2, the driver’s REP is engaged from the moment the police constable starts to ask questions that do not relate to the law surrounding the safe operation of vehicles.

Please note that while travellers have a lower expectation of privacy at an international port of entry, as recognized by the SCC, they still have **some** expectation of privacy in certain situations.

Summary of Key Concepts in a Single Example

To see how these concepts work together, consider the following: as mentioned above, an individual’s sexual orientation is normally considered part of their biographical core of personal information. Travellers entering Canada have a reasonable expectation of privacy in regards to their sexual orientation, and therefore collecting or disclosing that information for no program-related or authorized reason (i.e., without cause) would generally be considered an unreasonable search and seizure.

However, when viewed in the context of certain immigration streams, an individual’s sexual orientation may not be considered biographical core of personal information. An individual may be sponsoring their same-sex spouse or partner, or submitting a refugee claim based on their sexual orientation. In these latter two situations, the Government of Canada would need to collect and/or disclose information regarding the individual’s sexual orientation in order to process the immigration file. The individual’s reasonable expectation of privacy would be lowered in such circumstances, and the search and seizure of information relating to their sexual orientation would be considered reasonable.

Consulting the Information Sharing and Collaborative Arrangements Policy (ISCAP) Unit

CBSA officials should consider consulting the [Information Sharing and Collaborative Arrangements Policy Unit](#) prior to disclosing information that is likely to engage a person’s REP. When appropriate, the ISCAP Unit will consult with Legal Services to review the Agency’s proposed response to a request. In cases where a CBSA official has concerns as to whether a request for information is reasonable, the official may advise the requester that a subpoena or a judicial order **may** be required. By having a judge, or a person capable of acting judicially, authorize a disclosure through a determination as to the reasonableness of the request, the CBSA is exercising due diligence and ensuring that disclosure of information is reasonable under section 8 of the *Charter*.



PROACTIVE DISCLOSURES

A “proactive disclosure” is defined as a disclosure that is made when a CBSA official provides information to a recipient outside of the CBSA **without** the recipient having asked for the information. In other words, **information is being provided without a request**.

Disclosures that are made in accordance with the terms of a written agreement and that are made on a systematic basis, despite no specific request having been received for that information, are not considered proactive disclosures. An assessment of what is to be shared and the process for deciding the appropriateness of the sharing has already been done during the creation of the WCA.

When to make proactive disclosures

Deciding to make a proactive disclosure is a highly discretionary decision that is to be exercised with care on a case-by-case basis. It has a greater risk of *Charter* infringement and a higher risk of injury to public or private interests. As such, these disclosures require added consideration. A lawful authority must always exist and the onus is on the official approving the disclosure to ensure that there is a solid rationale for the disclosure.

Proactive disclosures should only take place when an official is of the opinion that the state's interest clearly outweighs the person's expectation of privacy, and the information being shared is accurate and was obtained in the course of administering or enforcing the Agency's program legislation.

For additional clarity, during the course of their regular duties, CBSA officials may incidentally come across indications / evidence of wrong-doing that is outside of the Agency's mandate to address. A proactive disclosure could be considered in these situations. Please note however, that CBSA officials **cannot** investigate or intentionally collect information for purposes outside of the Agency's mandate.

Reasonable Expectation of Privacy (REP) in relation to proactive disclosures

Since the CBSA is unlikely to make proactive disclosures for relatively minor infractions (such as a missing or expired trailer permit), as a starting point it should be taken for granted that **any** proactive disclosure by the CBSA may have significant implications and **will** engage the subject's REP. When an individual's REP is engaged, there is a greater chance of a violation of section 8 of the Canadian Charter of Rights and Freedoms (i.e.: that person's right against unreasonable search and seizure).

Supreme Court of Canada jurisprudence indicates that there is measurable quality to REP as well, which allows for a balancing of society's interest in protecting privacy rights with effective law enforcement. One way of looking at it is to ask “what course of action in terms of sharing information would a reasonable person, having access to all of the facts, (including context) consider reasonable”?



Process for making a proactive disclosure

STEP 1: Determine what the CBSA's lawful authority is to disclose the information to the intended recipient.

A legislative authority to disclose must exist in order for CBSA officials to disclose the information proactively. Put another way, if a request for that same information were to be received, there would have to be a lawful authority for that information to be disclosed and the appropriate approval levels applied for that particular legislative disclosure authority. The same concept holds true for a proactive disclosure and its consultation step is explained below.

Note: If you are unable to find a lawful authority to disclose, but believe that the potential infraction/wrong-doing is sufficiently grave that a proactive disclosure should be made, please consult the Public Interest Disclosure Procedures in the [Information Sharing Toolkit](#).

STEP 2: Contact the intended recipient to provide them with a depersonalized explanation of the situation.

When a CBSA official or other party sends a request for information, the receiver can assume quite logically that the requestor believes the information they requested is relevant for their purpose. Also, a properly formulated request normally provides sufficient information to make at least a preliminary determination of the legislative purpose for which the information is being sought.

However, when a proactive disclosure is being considered by a CBSA official, the usefulness or relevance of the information and how in fact it will be used to further another institution's mandate is usually not readily available or is more difficult to clearly determine.

Consequently, **all** proactive disclosures **must** be preceded by a consultation. As mentioned previously, proactive disclosures have a greater risk of *Charter* infringement than request-based disclosures. When considering approval for a consultation, the approving official should exercise the same thought process they would as if they had received a disclosure request.

The primary goal of a consultation for proactive disclosure is to determine whether the information:

- would be relevant to the mandate of the intended recipient;
- can be used legally by the recipient towards identified possible outcomes; and
- will in fact be used by the recipient - they may not have the resources to act on the information, despite its relevancy and available legal means to use it. Information should not be shared unless it will be put to use appropriately at the time it is received.

The consultation must address these three aspects in a hypothetical manner, in writing if security requirements allow, and must be devoid of identifying information (i.e., the name of a corporation or a person) and devoid of all other personal information. The exchange should cover data elements that could be provided, not the actual content of the data elements.

For example:

GOOD consultation: *"The CBSA has information indicating that an individual may be plotting a possible terror attack in Montreal. Does your mandate cover investigating such crimes and if so, are you are interested in the identity of the subject? If yes to the previous questions, could you indicate your lawful authority to collect this information, and the possible outcomes of your use of the information?"*

VS

BAD consultation: *"Would it be helpful if I officially disclosed to your institution that John Smithy Smiths, date of birth June 5, 1998, underwent a secondary examination at the border and officers found written plans indicating he intends to plant a bomb under the Jacques Cartier Bridge in Montreal?"*



STEP 3: Disclose only the minimum information needed by the recipient to confirm their interest.

If you are satisfied that the intended recipient is interested in receiving the information, has a lawful authority to collect it, and has outlined the possible outcomes and the possible uses and you are also satisfied with the stated uses, then you may disclose the minimum information needed by the recipient to confirm their interest.

Once the recipient has confirmed their interest, they may make a formal request for any additional information and the CBSA will process the request as a regular request for information.

STEP 4: The CBSA authorizing official must record the proactive disclosure and document their rationale.

Details about the consultation and the rationale for the disclosure decision are to be kept in the pertinent CBSA file. It is extremely important that greater attention be given to this step due to the greater risk of Charter infringement than request-based disclosures. Additionally, any policy requirements regarding recording the disclosure activity must be adhered to. For example, all disclosures of information under the *Security of Canada Information Sharing Act* must be recorded in a specific manner specified in the *CBSA Directive on SCISA*.

Caveats

Proactive disclosures **must** be accompanied by a caveat that specifies, at minimum, that the CBSA will be advised if the information it disclosed will be forwarded by the recipient to another institution or foreign government. This ensures that corrections or updates can be sent to any institution that has received the information contained in the original disclosure.



QUESTIONS & CONSIDERATIONS RELATED TO THE DISCLOSURE OF INFORMATION

The Supreme Court of Canada has stated that discretion must be exercised when information is being disclosed, otherwise there is a very strong chance that the disclosure will be considered unreasonable and a breach of the subject's section 8 Charter rights, or in other words, a breach of the subject's reasonable expectation of privacy. Disclosures should be made on a case-by-case basis, unless provisions have been made through a written arrangement for a well-defined, regular or systematic sharing of information.

Below are a series of questions and considerations to help guide the thought process of CBSA officials in ensuring that their discretion is properly exercised. These questions and considerations apply to both request-based disclosures and proactive disclosures.

The steps below are exhaustive and cover virtually all information sharing scenarios; however, the depth of analysis may vary greatly depending on the complexity of the situation. Further, those who share information on a regular basis will likely develop a familiarity with the process and will be able to use the following material as a reference.

OUTGOING INFORMATION	Request Based	Pro Active
1. Understanding the situation		
Confirm identity of requestor / recipient.	X	X
Confirm identification of legislation being enforced or administered by requestor / recipient.	X	X
Confirm data elements involved.	X	X
Authorized consultation with recipient (for proactive disclosures only).		X
2. Analyzing the situation		
<i>Alternate Source</i> : can the info be obtained from another / better source?	X	X
<i>Accuracy</i> : assess the accuracy level of the information.	X	X
<i>Type of Information</i> : customs or personal (non-customs) information?	X	X
<i>Disclosure Provision</i> : disclose under CA 107 and/or PA 8?	X	X
Can the CBSA refuse to disclose information?	X	X
Does REP outweigh the benefit of disclosing?	X	X
Review the considerations / clause-by-clause guidance in this policy.	X	X
<i>Proactive disclosure only: minimum disclosure</i> – only enough information to determine further interest.		X
<i>Minimum Disclosure</i> : only enough information to address the specific request.	X	X
<i>Caveats</i> : respect third-party caveats attached to the information.	X	X
<i>Caveats</i> : prepare appropriate caveats regarding recipient use and onward disclosure.	X	X
3. Making a disclosure decision		
Present disclosure recommendation to appropriate authority for approval.	X	X
Obtain approval for the disclosure and document decision (see Administrative Stage).	X	X
4. Administrative Stage		
Record your information-sharing activity.	X	X
Ongoing disclosures of similar nature? If yes, contact ISCAP Unit to discuss.	X	X



PHASE I - UNDERSTANDING THE SITUATION

Confirm identity of the requestor / recipient

- CBSA officials must be reasonably satisfied with:
 - the identity of the requester or recipient;
 - their role within their particular institution; and by extension,
 - their right to receive and use the information.
- For example, the request may have been issued from another government department's general e-mail address account. The onus is on the official to confirm the actual identity of the requester, such as their name and title or badge number.
- The official should also be reasonably satisfied that the requestor or recipient has duties or a role within their institution that warrants their receipt of the information in question; often, the right to know or use information is specific to a particular area or role within an institution, rather than the institution as a whole.
- If the official is uncertain of the requester's or recipient's identity, or their right to know or use the information in question, the official should take appropriate steps to confirm these matters prior to considering the disclosure request or a proactive disclosure.

Confirm identification of legislation being enforced or administered by requestor / recipient

- Identifying the recipient's pertinent legislation is necessary for you to be able to conduct an effective analysis that properly supports whatever disclosure decision is made.
- The recipient should identify as specifically as possible (i.e., down to the sub-section or paragraph level where necessary or possible) the legislation that will be administered or enforced by the recipient or their institution. For proactive disclosures, this can be determined from the recipient during the mandatory consultation step.
- It should also be confirmed to the satisfaction of CBSA officials making the disclosure decision that the legislation identified is indeed part of the mandate, jurisdiction or responsibilities of the recipient.
- The recipient must also identify the use or purpose of collecting the information, and the intended or possible outcomes. For example, the information could be used to investigate an alleged offence, and the potential outcomes could be a closing of the investigation or prosecution of the individual with a minimum penalty of 6 months incarceration, and a maximum penalty of 4 years' incarceration.

Confirm data elements involved

- The information being considered for disclosure should be specific, i.e., specific data elements and/or date ranges or locations should be identified and considered as restrictively as practicable.
- It is rarely acceptable for a request to specify, (or a proactive offer of information to provide) "ALL" information related to a particular individual or business.
- Providing **all** available information significantly increases the risk of providing more information than necessary, and consequently increases the risk of a breach of privacy and a resulting wide variety of negative consequences for doing so.
- Moreover, extremely broadly worded requests (or proactive offers of information) likely indicate that due diligence has not been applied in determining what information is actually needed, and should serve as a cautionary flag regarding the practices and procedures of the requestor (or offering entity) in general.
- It is important to note that responding to a request by stating that the CBSA has no information is in fact a disclosure of information, and requires the same level of analysis and rigour as disclosing any other information. Responses indicating that no information will be disclosed should be neutrally worded and free of insinuation. For example, "The CBSA will not be providing any information in response to your request."



Authorized consultation with recipient (for proactive disclosures only)

- Consultation with the potential recipient of a CBSA proactive disclosure must first be approved by an official who is at a rank or level authorized to approve a request-based disclosure. The actual disclosure, in most cases, will be approved at a higher level specific to proactive disclosures. (See Approval Tables specific to the given legislative authority to disclose.)
- The onus is on the approving official to ensure that there is a solid rationale for the consultation.
- The primary goal of a consultation is to determine whether the information:
 - would be relevant to the mandate of the intended recipient;
 - can be used legally by the recipient; and
 - is of interest for the recipient - they may not have the resources to act on the information, despite its relevancy and available legal means to use it.
- Please refer to the **Proactive Disclosure** section of this policy for more details on the consultation process and how it should be conducted.

PHASE II - ANALYZING THE SITUATION

Alternate Source: can the info be obtained from another / better source?

- If a CBSA official is aware that the information is in the possession of another institution or originated from another institution, the official should consider redirecting the requestor or potential recipient to either the original collector of that information, **or** to another institution that holds the information and where that institution has the best-suited mandate for the use of that information.
- Please note that for immigration files, if there is an active enforcement action on the file, the file is considered to be a CBSA file, regardless of which organization originally collected the information. Additionally, if the last action on a **closed** file was an IRPA enforcement action, the file is considered to be a CBSA file. Please see the [CIC-CBSA Information Sharing Annex, section 6](#) for more information on CIC-CBSA governance of immigration information.
- When a CBSA official is aware that the information is available in the public domain, requesters or potential recipients should be directed to the public source, rather than obtaining it from the CBSA. For example:
 - CUSTOMS: Aggregate trade data is available on Industry Canada's web site entitled "Trade Data Online." Industry Canada also has a web site entitled "Canadian Importers Database".
 - NON-CUSTOMS: The FBI provided a confidential file to the CBSA on the gang known as Mara Salvatrucha (also known as MS-13) during a time when that gang was expanding its operations into Canada. Since that time, the FBI has made an updated version of the file publicly available on its website. Any requests for that specific file from the CBSA should be redirected to the FBI website as it is now in the public domain and will have a more up-to-date file.

Accuracy: assess the accuracy level of the information.

- Before disclosing any information, CBSA officials should ensure to their satisfaction that the information is free from error in the sense that the information to be exchanged is up-to-date and factual to the best of the CBSA's knowledge.
- Accuracy is particularly important if the disclosure in question is proactive in nature, due to the heightened Charter risk (reasonable expectation of privacy) associated with such disclosures.
- Although there is no definitive formula for determining how accurate information held by the CBSA is, the following guidelines can be applied on a case-by-case basis, keeping in mind that additional rigour is required for proactive disclosures:
 - Communication or use of data may alter the data – confirm the information with its source as necessary. In many cases this may involve cross-referencing the information to be disclosed with CBSA IT systems, but other measures such as reaching out to the organization that initially provided the information may be necessary.



- If possible, validate the information by comparing it to other sources; ensure that any discrepancies are resolved before making the disclosure.
- Double-check spelling, especially for foreign-language names, dates, etc.
- If possible/practicable, have a colleague review the material.
- For more information on assessing the accuracy of information, please consult the Data Validity Table in Appendix A of the Operational Guidelines—Ministerial Direction to the CBSA on Information Sharing with Foreign Entities.

Type of Information: customs or personal (non-customs) information?

- CBSA officials need first to determine the type of information being considered for disclosure.
- The type of information will dictate under which Act and provision the information may be disclosed. This principle holds true for disclosures in response to a request or for proactive disclosures.
- Information collected by the CBSA is likely to be either customs information or personal (non-customs) information.
- Customs information includes, but is not limited to, information that is collected for the administration or enforcement of the *Customs Act* or the *Customs Tariff*. Customs information may contain elements that are considered personal information; however, if the personal information is collected for the purposes of the *Customs Act*, it remains categorized as customs information.
- Personal or “non-customs” information is information that is about an identifiable individual that is recorded in any form as defined in section 3 of the *Privacy Act*. This will include information such as immigration information.
- NOTE: the CBSA does collect information under other Acts, which may, in turn change the nature of the information.
 - For example, information collected for the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) may only be disclosed under provisions in that Act.

Disclosure Provision: disclose under CA 107 and/or PA 8?

- The type of information (i.e., how and for what purpose the information was collected) will generally dictate under which Act and provision the information may be disclosed, regardless of whether the disclosure is in response to a request or is made proactively.
- Customs information may only be disclosed under section 107 of the *Customs Act*.
- Personal (non-customs) information may only be disclosed under section 8 of the *Privacy Act*, unless there is a more restrictive disclosure regime (for example, section 107 of the *Customs Act* is more restrictive than section 8 of the *Privacy Act*).
- For more information on *Security of Canada Information Sharing Act* (SCISA) related disclosures, please see the CBSA Directive on SCISA.
- If an official is of the view that more than one provision in a particular Act may apply for disclosure in a specific case, they are to use the provision which “best fits” the potential disclosure under consideration.
- Similarly, if an official is of the view that more than one Act may apply for disclosure in a particular case, they are to list each Act and use only one provision from each Act for disclosing information.

Can CBSA refuse to disclose information?

- The disclosure of information under section 107 of the *Customs Act*, and subsection 8(2) of the *Privacy Act* is **discretionary**. The concept of discretionary disclosure is almost without exception contained in all legislative authorities for disclosing information.
- Information sharing legislation states that information “may” be disclosed vs. “must” be disclosed.
- This allows officials to exercise their discretion and elect not to disclose, even if the recipient has the authority to collect the information and the CBSA has the authority to disclose it.
- A CBSA official may refuse to disclose information if its disclosure may compromise an ongoing investigation or other CBSA initiated activity such as a compliance verification.
- Even court orders to provide information can be disregarded in very special circumstances through a specific mechanism. Contact the Information Sharing and Collaborative Arrangements Policy (ISCAP) Unit as soon as possible should such a situation or need arise.



Does REP outweigh the benefit of disclosing?

- Bearing in mind the explanation of key terms earlier in this policy such as Reasonable Expectation of Privacy (REP), Core Biographical Information, and Search & Seizure, and how they work together in determining an overall assessment of REP, a determination must be made as to whether or not, and to what degree the REP of a subject is engaged.
- The question of whether REP outweighs the benefit of disclosing will be assessed on a case-by-case basis.
- If it is not clear that the Government's interest in sharing the information outweighs the subject's REP, it may be beneficial to have an independent third party review the situation in terms of the subject's rights.
- This can be accomplished by requiring the requestor to obtain a court order, search warrant or subpoena; a judge will review the situation before issuing an order.
- NOTE: For disclosures under SCISA, the CBSA **will not ask a requestor to obtain a court order**. Please see the [CBSA Directive on SCISA](#) for more information.

Review the considerations / clause-by-clause guidance in this policy

- Please follow the clause-by-clause guidance in this policy for specific considerations related to specific disclosure authorities.
- NOTE: the disclosure should not conflict with other CBSA policies (e.g. Ministerial Directive on Sharing Information with Foreign Entities) or international obligations (e.g. UNHCR Convention and Protocol Relating to the Status of Refugees, General Agreement on Tariffs and Trade).

Proactive Disclosure Only: minimum disclosure – only enough information to determine further interest

- In order to minimize Charter risks when making a proactive disclosure, it is necessary to confirm whether or not the proposed recipient of the information has an interest in using the information and that it will in fact be put to use.
- The proposed recipient should only receive the minimum amount of information practicable to confirm their interest and the immediate usability of the information.
- If the recipient wishes to know more, then they may follow up with a formal request for information.
- Please see the section on [Proactive Disclosures](#) in this policy for more detailed information.

Minimum Disclosure: only enough information to address the specific request

- The CBSA must provide the minimum amount of information that will allow the recipient to carry out its own objectives (investigation, enforcement action, etc.).
- CBSA officials, not the requestor, make the final determination of what constitutes the minimum necessary amount of information to be disclosed.

Caveats: respect third-party caveats attached to the information

- When the CBSA receives information from a third-party, especially in an intelligence or criminal investigations context, it sometimes comes with caveats attached to it. Such caveats should be observed as the CBSA holds, uses, or further discloses the information.
- Caveats commonly attached to information received by the CBSA include:
 - the requirement to document the source of the information (e.g., in an IT system);
 - restrictions on subsequent disclosure (e.g., information will not be disclosed without first consulting the providing institution); and
 - limitations on the use of the information (e.g., use may be limited to statistical or research purposes).



Caveats: prepare appropriate caveats regarding recipient use and onward disclosure

- In some situations, it may be necessary for the CBSA to attach caveats to information that it provides to other organizations, especially in an intelligence or criminal investigations context.
- Although it is impossible to predict every possible caveat that the CBSA might attach to outgoing information, there are a several that are commonly used. These include:
 - the requirement to document the source of the information;
 - restrictions on subsequent disclosure (e.g., information will not be disclosed without first consulting and/or advising the CBSA); and
 - limitations on the use of the information (e.g., used only for the purposes for which it was disclosed such as conducting an audit or investigation, or a specific enforcement action, etc.).

PHASE III - MAKING A DISCLOSURE DECISION

Present disclosure recommendation to appropriate authority for approval

- Once the analysis of the proposed disclosure has been completed, and all considerations have been satisfied, the recommendation on whether to disclose or not is made.
- If the recommendation is to disclose, the official making the recommendation packages the minimal necessary information, their rationale for their recommendation, and any necessary caveats.
- This “package” is then presented for approval to the authorized official identified in the Approval Table found in the clause-by-clause guidance for the appropriate disclosure provision.

Obtain approval of disclosure and document decision

- A higher level of approval will often be required for proactive disclosures. This is in addition to the original approval an official would have received to conduct the initial consultation with a potential recipient (i.e.: the depersonalized information discussed in the hypothetical scenario).
- Only the officials identified in the Approval Tables, or those at a higher level to that of the identified officials, may approve the disclosure decision, unless a written agreement specifies other approval processes for a specific situation.
- Any official with appropriate security clearance and in position with duties related to disclosure activity may disclose the information provided they obtain the authorization of an official who is identified in the Approval Tables. For example:
 - an official in a Region wishes to make a Public Interest Disclosure under subparagraph 8(2)(m)(i), however no one in the Region is listed in the Approval Table for that subparagraph.
 - The Region may request that someone listed in the Approval Tables authorize the disclosure, such as the DG, Corporate Secretariat.
 - If the Corporate Secretary authorizes that specific disclosure, then the Region may disclose the information.
- Once the proposed disclosure is approved, the official making the disclosure must conduct the necessary steps to pass the information along to the recipient, and confirm receipt of the information by the recipient as necessary.
- **Important note:** If the disclosure is not approved, it may still be necessary to document this decision and rationale. For example:
 - subsection 8(4) of the *Privacy Act* requires that investigative body requests for information are to be recorded in addition to disclosures; this implies that if a disclosure was not made in response to a request, the decision not to disclose must be documented / recorded. For more information on Investigative Body Designation (IBD) please see the [IBD Toolkit](#).
 - Requests made to the CBSA pursuant to SCISA must be documented, regardless of the CBSA's response to the request.



PHASE IV—ADMINISTRATION

Record your Information-Sharing Activity

GENERAL

- The recording can be done in various ways, including through recording in a notebook to entering it on an applicable information system. See below for specific directions for various Acts.
- Officials are encouraged to document situations where information was not disclosed, especially when there is a potential that the decision might be contentious or of future importance. Officials should indicate what information was not disclosed as well as the reasons for that decision, on a case-by-case basis.
- The record of the disclosure, or non-disclosure, is to be kept for a minimum of two years after the last administrative action or use of the information. Please consult [Information Management \(IM\)](#) if you are unsure of how long you are required to keep the record.

PRIVACY ACT

- Officials are to record all disclosures of personal information, with the exception of paragraph 8(2)(a) – Consistent Use disclosures, as per section 9 of the *Privacy Act* (refer to [Appendix B](#) of this policy for full details).
- Note that subsection 8(4) of the *Privacy Act*, contains stricter documentation governance requirements for disclosures made under paragraph 8(2)(e) – Investigative Bodies. Further, subsection 8(4) requires that **requests** for information by designated Investigative Bodies also be recorded, not just disclosures. For more information on information sharing related to Investigative Body Designation (IBD), please see the [IBD Toolkit](#).

SCISA

- All requests made to the CBSA for SCISA related information sharing must be documented, regardless of what disclosure decision was actually taken. For more information on how to record SCISA related requests and disclosures, please see the [CBSA Directive on SCISA](#).

Ongoing Disclosures of a Similar Nature

- Whenever the CBSA discloses information on an ongoing basis with another organization or it becomes evident that a disclosure may lead to a series of similar disclosures to the same client, the CBSA's Information Sharing and Collaborative Arrangements Policy Unit strongly recommends that the Agency enter into a written collaborative arrangement (WCA) with the recipient of the information.
- The WCA serves to ensure consistency is applied when considering and performing disclosures, and reduces the potential of a privacy breach.
- In drafting a new WCA, officials are directed to use the [Policy and Guide for the Management and Development of Written Collaborative Arrangements](#). Please contact the [ISCAP Unit](#) for assistance.



APPROVAL TABLES

Section 8(1) to paragraph 8(2)(m) contain tables that identify which CBSA officials have the authority to approve the disclosure of personal information.

Only the officials identified in the approval tables, or those at a higher level to that of the identified officials, may approve the disclosure of personal information. An individual who is not identified in the tables may disclose the information provided they obtain the approval of an official in their program area who is identified in the tables.

Example: A region wishes to make a Public Interest Disclosure under subparagraph 8(2)(m)(i), however no one in the region is listed in the approval table for that subparagraph. The region may request that someone listed in the approval table authorize the disclosure, such as the Corporate Secretary. If the Corporate Secretary approves that specific disclosure, then the region may disclose the information.

RECORDING DISCLOSURES

Officials are to record all disclosures of personal information, with the exception of *Paragraph 8(2)(a) – Consistent Use* disclosures, as per section 9 of the *Privacy Act* (see Appendix B of this policy for full details).

The recording can be done in various ways, including through recording in a notebook to entering it on an applicable information system.

In addition, *Paragraph 8(2)(e) – Investigative Bodies* contains stricter documentation governance requirements which are listed in subsection 8(4) of the *Privacy Act*.

In the event that a disclosure is not made in response to a request, officials are still encouraged to document the occasion and indicate what information was not disclosed as well as the associated reasons for that decision, on a case-by-case basis. This documentation is to aid in information sharing tracking and audit purposes.

The record of the disclosure, or non-disclosure, is to be kept for a minimum of two years after the last administrative use of the information. Please consult Information Management (IM) if you are unsure of how long you are required to keep the record.

ONGOING DISCLOSURES

Whenever the CBSA discloses personal information on an ongoing basis with another organization, or it becomes evident that a disclosure may lead to a series of similar disclosures to the same client, the CBSA's Information Sharing and Collaborative Arrangements Policy (ISCAP) Unit strongly suggests that the Agency enter into a written collaborative arrangement (WCA) with the recipient of the information. The WCA serves to ensure consistency is applied when considering and performing disclosures, and reduces the potential of a privacy breach.

In drafting a new WCA, officials are directed to use the *Policy and Guide for the Management and Development of Written Collaborative Arrangements*.



EDITION NOTE

To the extent that this policy is inconsistent with the *Privacy Act*, the *Privacy Act* will prevail.

ENQUIRIES

Please direct any questions about this document to:

Information Sharing and Collaborative Arrangements Policy Unit

Access to Information and Privacy Division, Corporate Secretariat

Corporate Affairs Branch

Vanier Towers

333 North River Road, A-14

Ottawa, Ontario, K1A 0L8

E-mail: CBSA-ASFC_Info_Sharing-Echange_info



8(1)

CONSENT

LEGISLATION

8(1) – Disclosure of Personal Information

Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be disclosed by the institution except in accordance with this section.

SUMMARY

1. This provision permits the CBSA to disclose personal information under its control relating to an individual provided that the individual has granted consent to share that information.

CONSIDERATIONS

2. The disclosure of personal information under this provision requires that the individual provide consent. For the consent to be considered a valid consent, two elements are required: the consent must be **informed**, and the consent must be **voluntary**.
3. Consent must be fully informed. This means that an individual must be made aware of the purpose(s) for which the information will be shared, and if possible, the implications of the sharing.
4. Consent must be voluntary. This means that an individual must not be coerced or placed under duress in order to grant their consent.
5. The official must be satisfied with the identity of the individual granting consent prior to making any disclosures.
6. It is preferable to have a person's consent in writing for court and audit purposes. The CBSA may accept a verbal consent depending on the facts of a situation. Verbal consent should be documented as soon as possible, and if practical, the individual providing it should initial or sign the consent statement written out by the CBSA official if the individual is in the presence of a CBSA official at the time of the request.
 - a) Information about the individual providing consent
 - i. Their first name and surname
 - ii. Basic identification information such as date of birth, FOSS ID number, etc.
 - iii. Contact information (such as telephone number, residential address, email, etc.)
 - b) Nature of personal information to be disclosed
 - i. The person giving consent is to provide a description of the personal information (such as data elements) to be disclosed
 - ii. If it is relevant, the person giving consent should provide relevant dates surrounding the information to be disclosed
 - iii. If possible, the person giving consent should indicate to whom they are granting consent for their information to be disclosed to (for example, consent to disclose to the CBSA vs consent to disclose to federal government institutions)
 - c) Signature of person providing written consent
 - i. The person providing a written consent must sign the letter



7. Customs information cannot be disclosed under the *Privacy Act*, it may only be disclosed under the *Customs Act*, as outlined in the [Policy on the Disclosure of Customs Information – Section 107 of the Customs Act](#). Section 107 of the *Customs Act* has a similar provision that can be used to disclose customs information with the consent of the individual, paragraph 107(9)(c).

EXAMPLES

8. Transport Canada (TC) contacts the CBSA to request information on an individual seeking to obtain an airport security pass. The individual has signed a consent form with TC, authorizing that institution to collect information on the individual that may relate to their eligibility on obtaining a security clearance. The CBSA may exercise its discretion and disclose any relevant information.
9. Individuals seeking provincial social assistance, as part of their application process, sign a consent form allowing the Social Services Unit to verify their eligibility and continued eligibility to receive benefits. As no one is required to apply for social assistance and the consent is articulated on the application form, this consent is informed and voluntary.
10. An individual is applying to become a member of a police force. The police force confirms they would like to verify the individual does not have any active immigration enforcement action against them, and that the information should be provided directly by the CBSA. The individual voluntarily consents as they are fully aware of the implications of the disclosure from the CBSA to the police force (such as not being given further consideration if the CBSA confirms a current immigration enforcement action on the applicant's file or potential administrative action).

APPROVAL TABLE – 8(1)

Location	Branch	Directorate / Area	May approve the disclosure
National Headquarters	All	All Directorates	Any CBSA Official
Region	All	All Areas	Any CBSA Official



8(2)(a)

CONSISTENT USE

LEGISLATION

8(2) – Where personal information may be disclosed

Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed:

- (a) for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose;

SUMMARY

1. A consistent use must have a reasonable and direct connection to the original purpose the information was collected.

CONSIDERATIONS

2. A reasonable and direct connection test should be applied in cases of consistent use. The three tests that are usually applied are:
 - a) Is the information collected by the CBSA required by the requester to administer or enforce the same legislation?
 - or
 - b) Is the information collected by the CBSA required by the requester to administer or enforce the same program or purpose?
 - or
 - c) Is the information listed in [Info Source](#) as a consistent use?

NOTE: Only **one** of the tests need to be met for the information to be considered consistent use.

3. **Collected for the same legislation:** under this test, each partner is administering or enforcing the same legislation.
4. **Collected for the same program or purpose:** if a program is established between partners who are administering or enforcing different legislation, but are working cooperatively for the purposes of the program, this test can be considered met. The more challenging aspect of this test is whether the purpose is similar in nature when both partners are administering or enforcing different legislation and are not part of the same program. The purpose can be considered similar if the individual (or the general public) would expect that the information would be used for that consistent purpose, even if it was not spelled out.
5. **Listed in [Info Source](#):** section 11 of the *Privacy Act* requires that federal government institutions create and maintain "Personal Information Banks" (PIBs) whenever they collect personal information for an administrative or program use. Each PIB lists the personal data elements that are collected for that program, the purpose for the collection, and the consistent uses of the information. If the information sharing activity is listed in the PIB as a consistent use, then this test has been met.



6. If the proposed use does not meet the above tests, and there is still the belief by the CBSA that the information should be disclosed under the consistent use provision, then the program area responsible for the PIB should be contacted to verify if they are in agreement. If the program area agrees, they would need to contact the [ATIP office](#) to have their PIB in Info Source updated to reflect the new consistent use.
7. In order for the CBSA to request information about an individual from another institution, the CBSA must first disclose some basic information about that individual to the other institution (such as a name, ID number or other personal identifiers). Paragraph 8(2)(a) is the provision that authorizes that proactive disclosure. In essence, for the administration or enforcement of a specific legislation (ex: IRPA) the CBSA is disclosing personal information to a group outside of the CBSA in order to obtain information related to that individual for the administration or enforcement of that same legislation.
8. Section 9 of the *Privacy Act* states that all disclosures of information must be recorded unless the disclosure is listed as a consistent use in the Personal Information Bank (PIB) for that program. This means that if the official is disclosing information under 8(2)(a) **and** that use is listed in the PIB, the disclosure does not need to be recorded. Please note that if the disclosing official feels that a particular consistent use disclosure could potentially result in future concerns, then a recording of that specific disclosure is recommended. CBSA PIBs can be found at [Info Source](#).
9. The requester must provide the name of the statute they are administering or enforcing **and** the specific section (or subsection, paragraph, subparagraph, clause or subclause, if necessary) within the statute that is being administered or enforced.
10. The CBSA cannot be compelled to disclose information. The *Privacy Act* clearly states that the institution "may" disclose, not that it "must" or "shall" disclose.
11. Customs information cannot be disclosed under the *Privacy Act*, it may only be disclosed under the *Customs Act*, as outlined in the [Policy on the Disclosure of Customs Information – Section 107 of the Customs Act](#). Section 107 of the *Customs Act* has a similar provision that can be used to disclose customs information, paragraph 107(4)(c).

EXAMPLES

12. CIC collects information from an individual seeking admittance to Canada and a work permit. The information is collected by CIC for the administration of the *Immigration and Refugee Protection Act* (IRPA) and the individual is later charged by a police service with offences under the *Criminal Code*. At this point, the CBSA needs to collect information about the individual for the enforcement of IRPA. The disclosure to the CBSA of some or all of the information collected by CIC would be consistent use as it was collected to administer and/or enforce the same legislation: IRPA.
13. CIC requests that the CBSA verify if individuals seeking to gain Canadian Citizenship have any active immigration enforcement actions relating to them (including whether residency obligations have been met). In situations where that is the case, the CBSA is asked to provide CIC with sufficient detail to enable CIC to make an eligibility determination on the citizenship application. CIC is administering the *Citizenship Act* while seeking IRPA information from the CBSA. While different legislation are being administered or enforced by CIC and the CBSA, the purpose is similar, that of determining the admissibility and the right to remain in Canada of an individual.



14. Employment and Social Development Canada (ESDC, formerly known as HRSDC) requests IRPA enforcement information from the CBSA for the purpose of administering or enforcing the *Old Age Security Act*, specifically, they are seeking residency obligation information. Different legislation and purposes are involved in the requested information. As the first two tests are not met, the last test is to verify the CBSA PIB listed in Info Source that relates to the CBSA program that collected the information, in this case, the PIB entitled the "Enforcement Data System" (Bank Number: CBSA PPU 032). Information from the purpose section of the PIB states the information collected is "to help determine the admissibility of persons to Canada or the right of persons to remain in Canada, and to produce statistical reports in support of the enforcement function". Further, in the "Consistent Uses" section of the PIB, HRSDC is listed as one of the organizations using the information. Therefore, the disclosure could be considered consistent use.

APPROVAL TABLE – 8(2)(a)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Any CBSA Official	Manager
Regions	Operations	All Areas	Any CBSA Official	Chief, Manager or Assistant Director, as applicable
Exceptions:				
National Headquarters	Operations	National Border Operations Centre	Any CBSA Official	Supervisor



8(2)(b)

PURSUANT TO AN ACT OF PARLIAMENT OR REGULATION WHICH AUTHORIZES DISCLOSURE

LEGISLATION

8(2) – Where personal information may be disclosed

Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed:

(b) for any purpose in accordance with any Act of Parliament or any regulation made thereunder that authorizes its disclosure;

SUMMARY

1. Personal information may be disclosed for any purpose when a provision of federal law or regulation authorizes its disclosure.

CONSIDERATIONS

2. “Act of Parliament” means federal statutes, not provincial statutes.
3. This provision by itself cannot be used to disclose information; it must be used in conjunction with another piece of legislation that authorizes the disclosure (this is different from the authority to collect). The requesting official or institution must clearly identify which piece of legislation, including section, subsection, paragraph, subparagraph, clause or subclause **authorizes the disclosure**.
4. The requester must provide the name of the statute they are administering or enforcing **and** the specific section (or subsection, paragraph, subparagraph, clause or subclause, if necessary) within the statute that is being administered or enforced. Please note that this information is required to verify the requester’s authority to collect the information.
5. The CBSA cannot be compelled to disclose information. The *Privacy Act* clearly states that the institution “may” disclose, not that it “must” or “shall” disclose.
6. Customs information cannot be disclosed under the *Privacy Act*, it may only be disclosed under the *Customs Act*, as outlined in the Policy on the Disclosure of Customs Information – Section 107 of the Customs Act. Section 107 of the *Customs Act* has a similar provision that can be used to disclose customs information, paragraph 107(5)(b).
7. The Security of Canada Information Sharing Act (SCISA) provides authority for all federal government institutions to disclose information that relates to an “activity that undermines the security of Canada” to designated Canadian federal government institutions that have national security responsibilities. The CBSA is one of the designated recipient institutions, along with 16 other federal institutions. Officials are to consult the CBSA Directive on Sharing Information Pursuant to the Security of Canada Information Sharing Act for specific guidance on making disclosures using the authority in SCISA.



EXAMPLES

8. **Paragraph 34(1)(f) of the *Privacy Act*** permits the Privacy Commissioner of Canada to examine or obtain copies of or extracts from books or other records found in any federal government office for the purposes of conducting an investigation. The CBSA may disclose personal information to the Privacy Commissioner of Canada under this provision.
9. **Paragraph 36(1)(f) of the *Access to Information Act*** permits the Information Commissioner of Canada to examine or obtain copies of or extracts from books or other records found in any federal government office for the purposes of conducting an investigation. The CBSA may provide personal information to the Information Commissioner of Canada under this provision.
10. **Section 9 of the *Protection of Passenger Information Regulations*** of the *Immigration and Refugee Protection Act*, permits disclosure to Canadian government departments API information and PNR information retained by the Agency in the PAXIS system, which may be disclosed by the Agency to any Canadian government department for certain purposes. Some API/PNR information may be customs information and if so, may only be disclosed under section 107 of the *Customs Act*.
11. **Section 21(1) *Refugee Protection Division Rules*** of the *Immigration and Refugee Protection Act*, subject to sub-rule (5), the Division may disclose to a claimant personal and other information that it wants to use from any other claim if the claims involve similar questions of fact or if the information is otherwise relevant to the determination of their claim.
12. **Section 13(1) *Auditor General Act***, permits the Auditor General to access any information, reports or explanations they might consider necessary in fulfilling their purpose of auditing the accounts of the Government of Canada.
13. **Subsections 5(1) and 5(2) of the *Security of Canada Information Sharing Act*** are the authorities that enable disclosure of non-customs information for security of Canada purposes. Where this non-customs information is also considered personal information, the *Privacy Act*, pursuant to paragraph 8(2)(b), allows for the use of SCISA to disclose that personal information. "*The information must be relevant to the recipient institution's jurisdiction or responsibilities under an Act of Parliament or another lawful authority in respect of activities that undermine the security of Canada, including in respect of their detection, identification, analysis, prevention, investigation or disruption.*"

APPROVAL TABLE – 8(2)(b)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	Director
Regions	Operations	All Areas	Chief or Manager	Assistant Director or Director
NOTE: For disclosures of information made pursuant to the <i>Security of Canada Information Sharing Act</i> , specific authorities to disclose are prescribed; please refer to the CBSA Directive on SCISA for more information.				



8(2)(c)

SUBPOENAS, WARRANTS OR PRODUCTION ORDERS

LEGISLATION

8(2) – Where personal information may be disclosed

Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed:

- (c) for the purpose of complying with a subpoena or warrant issued or order made by a court, person or body with jurisdiction to compel the production of information or for the purpose of complying with rules of court relating to the production of information;

SUMMARY

1. Personal information may be provided to any person, if the information is required to comply with a subpoena, warrant, production order or court order issued by a court.

CONSIDERATIONS

2. This provision provides the authority for the Agency to disclose information in order to comply with a warrant or subpoena. The subpoena, warrant, production order or court order may order the disclosure of personal information to third parties.
3. The subpoena, warrant, production order or order must be delivered to the CBSA for review. Once delivered, it must be handled expeditiously where an immediate consultation with CBSA management is required and one with Legal Services is recommended.
4. This provision also includes complying with the rules of court relating to the production of information in criminal or civil matters, such as those found in the Federal Court Rules or Provincial Court Rules. It is important to remember that only the information specifically requested should be disclosed.
5. If the CBSA considers that an individual may or would likely have a reasonable expectation of privacy relating to a request, it may advise the requester that a subpoena or a judicially authorized warrant MAY be required. By having a judge make the determination on the reasonableness of a request, the CBSA is exercising due diligence in ensuring a requester is accorded the benefit of having a neutral third party determine if the request is reasonable or not.
6. A “court” includes, but is not limited to: federal courts, provincial courts, family courts, municipal courts, or a Tribunal at the Immigration and Refugee Board of Canada (IRB) such as the Immigration Appeal Division or Refugee Protection Division.
7. This provision could also be used to disclose personal information to foreign courts if that court has the ability to compel the information, such as an international court. It should be noted that the majority of information disclosed to foreign courts are in accordance with paragraph 8(2)(f) as part of a Mutual Legal Assistance Treaty (MLAT).



8. There may be reasons why the CBSA may choose not to comply with a court order. Some of the reasons for not disclosing would be if doing so would put a confidential human source at risk, compromise an investigation, or involve the CBSA in contractual disputes or in family law matters.
9. The requester must provide the name of the statute they are administering or enforcing **and** the specific section (or subsection, paragraph, subparagraph, clause or subclause, if necessary) within the statute that is being administered or enforced. Please note that this information is required to verify the requester's authority to collect the information.
10. The CBSA cannot be compelled to disclose information. The *Privacy Act* clearly states that the institution "may" disclose, not that it "must" or "shall" disclose. Please note that this **does** apply to court orders, as even court orders **cannot** compel the CBSA to disclose information.
11. For the purposes of this provision, the jurisdiction to "compel" is the legislative or regulatory authority to issue the order for the production of the information as opposed to politely requesting the information. This provision should be read in context with subsection 8(2), where it states that the information "may" be disclosed.
12. Customs information cannot be disclosed under the *Privacy Act*, it may only be disclosed under the *Customs Act*, as outlined in the Policy on the Disclosure of Customs Information – Section 107 of the *Customs Act*. Section 107 of the *Customs Act* has two provisions that may be used to disclose customs information, one for domestic courts, paragraph 107(5)(m), and one for foreign courts for criminal proceedings, paragraph 107(5)(n).

EXAMPLES

13. Sometimes subpoenas are received from foreign courts, for example, at the request of U.S. Homeland Security for immigration information. Most foreign courts **do not** have jurisdiction to compel production of information from another country; however, "letters rogatory" or the Hague Service Convention can be initiated. This involves the foreign court order or subpoena being presented to a Canadian court and if that court accepts it, then it will make a Canadian order that is lawful and enforceable, which then permits the information to be disclosed to the foreign country. Nevertheless, Legal Services should be consulted to ensure there are no legal hindrances for this to take place, such as under the *Canada Evidence Act*.
14. The Immigration Refugee Board (IRB) issues a production order to the CBSA to provide all the information in a subject's immigration file relating to their misrepresentation to be used in the hearing of their spouse. The CBSA could disclose all or some of the information to the IRB as they do have the jurisdiction to compel the production of the information.
15. The IRB issues a production order to the CBSA to provide all the information in a failed refugee's immigration file to be used in the misrepresentation hearing of their parents. As in the previous example, the CBSA could disclose the failed refugee's misrepresentation information to the IRB as they do have the jurisdiction to compel the production of the information. However in this case, the CBSA should exercise their discretion and not disclose any information that was not directly related to the failed refugee's misrepresentation (i.e. not disclose address history, work history, medical information, etc.).
16. A failed refugee claimant has appealed to the Federal Court. The judge issues a court order for the CBSA to disclose the individual's full immigration file. In that file, there is information that was received in confidence from a foreign government and other information that was received from a confidential human source. The CBSA could refuse to disclose the information that was received in confidence and the information that could put the life of the confidential human source at risk.



APPROVAL TABLE – 8(2)(c)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	n/a
Regions	Operations	All Areas	Chief, Manager or Assistant Director, as applicable	n/a
NOTE: guidance from Legal Services and the ISCAP unit is recommended when considering disclosing information in response to a subpoena, warrant or court order.				



8(2)(d)

LEGAL PROCEEDINGS

LEGISLATION

8(2) – Where personal information may be disclosed

Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed:

(d) to the Attorney General of Canada for use in legal proceedings involving the Crown in right of Canada or the Government of Canada;

SUMMARY

1. Paragraph 8(2)(d) allows officials to disclose personal information to the Attorney General of Canada (including but not limited to: Crown Prosecutors, Department of Justice (DOJ) Legal Counsel and federal institution Legal Counsel), for the purpose of being used in or to prepare for legal proceedings commenced under federal legislation.

CONSIDERATIONS

2. The Attorney General of Canada is the Minister responsible for DOJ. Most federal government legal counsel are DOJ employees who are either employed directly at DOJ or are seconded to other federal institutions. This means that all the Legal Counsel employed at the Legal Services Unit (LSU) of the CBSA are DOJ employees who have been seconded from the DOJ to the CBSA. Legal Counsel can request that information be disclosed to them under this provision, whether they are Crown Prosecutors or Legal Counsel for a federal institution, provided that they will be using the information to prepare for legal proceedings involving the Government of Canada (usually, this is used for court cases).
3. This provision allows CBSA officials to disclose information in court while under oath.
4. If a CBSA official is scheduled to testify in court, they are strongly encouraged to seek guidance from their management and CBSA's Legal Services Unit prior to attending court.
5. The requester must provide the name of the statute they are administering or enforcing **and** the specific section (or subsection, paragraph, subparagraph, clause or subclause, if necessary) within the statute that is being administered or enforced. Please note that this information is required to verify the requester's authority to collect the information.
6. The CBSA cannot be compelled to disclose information. The *Privacy Act* clearly states that the institution "may" disclose, not that it "must" or "shall" disclose.
7. Customs information cannot be disclosed under the *Privacy Act*, it may only be disclosed under the *Customs Act*, as outlined in the Policy on the Disclosure of Customs Information – Section 107 of the Customs Act. Section 107 of the *Customs Act* has a similar provision that can be used to disclose customs information, paragraph 107(4)(a). Please note that 107(4)(a) only applies to **criminal** proceedings.



EXAMPLES

8. A failed refugee claimant has appealed to the Federal Court to reverse the negative decision issued against them by the Immigration and Refugee Board (IRB). Citizenship and Immigration Canada's (CIC) LSU requests that the CBSA provide them with all the information that it has on the subject that is relevant to the IRB's decision. The CBSA could disclose the requested information to CIC LSU for their court case.
9. A foreign national is suing the Government of Canada, CIC and the CBSA for endangering their life by returning them to their country of citizenship, where they were tortured. DOJ requests that the CBSA provide them with a copy of the foreign national's case file, especially any information that would indicate that they may be a danger to the public in Canada. The CBSA could disclose the requested information to DOJ as the information would be used for the preparation of the court case.
10. A Crown Prosecutor requests that the CBSA provide them information relating to a CBSA employee because they have laid *Criminal Code* charges against that employee and require the information to support their prosecution. The CBSA could disclose the requested information to Crown Prosecutor for their court case.
11. An attorney for an individual is preparing their case against another individual for court (an importer being sued, a divorce, etc) and requests the immigration file of the individual who is not their client. This request **does not** meet the criteria for this provision (the attorney requesting the information is not legal counsel for the Government of Canada and the proceedings do not involve the Government of Canada).

APPROVAL TABLE – 8(2)(d)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	E&I Officer *	n/a
Regions	Operations	All Areas	E&I Officer *	n/a
* Please see this policy's definition of "E&I Officer" in <u>Appendix A</u> .				



8(2)(e)

INVESTIGATIVE BODY

LEGISLATION

8(2) – Where personal information may be disclosed

Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed:

- (e) to an investigative body specified in the regulations, on the written request of the body, for the purpose of enforcing any law of Canada or a province or carrying out a lawful investigation, if the request specifies the purpose and describes the information to be disclosed;

SUMMARY

1. Personal information may be disclosed to a unit with investigative body designation (IBD) as listed in the *Privacy Regulations*. The request must be in writing, should clearly state the purpose and describe the information to be disclosed.

CONSIDERATIONS

2. For this provision, the investigative body must be listed in Schedule II of the *Privacy Regulations*. It **does not** include any other federal, provincial or municipal bodies with investigative duties or functions.
3. Broad or vague requests, or perceived “fishing expeditions” for information do not meet the criteria for this provision. The requests have to be specific.
4. The request for personal information under paragraph 8(2)(e) must be in writing and include the following:
 - (a) the name of the investigative body;
 - (b) the name of the individual who is the subject of the request, or some other personal identifier;
 - (c) a description of the requested information;
 - (d) the section (or subsection, paragraph, subparagraph, clause or subclause, if necessary) of the federal or provincial statute under which the investigative activity is being undertaken; and
 - (e) the name, title and signature (physical or electronic) of the requesting member of the investigative body.
5. As per subsection 8(4), all requests received under 8(2)(e) **must** be recorded by the receiving unit or office, even if no disclosure is subsequently made.
6. A record of the information disclosed must be kept as outlined in subsection 8(4) of the *Privacy Act*. This disclosure should include:
 - (a) the names of the requester and requesting institution;
 - (b) whether information was disclosed or the request was refused;
 - (c) the date the request was received;
 - (d) the specific data elements that were disclosed;
 - (e) the name, title and signature of the official who approved the disclosure;
 - (f) the date of the disclosure.



7. As part of the annual reports to Parliament on Access to Information and Privacy, all federal institutions are required by the Treasury Board to report the number of IBD disclosures they made that year. At this time, Treasury Board does not require that the number of requests received be reported as part of the Parliamentary Report.
8. The CBSA as a whole does not have investigative body designation status, as is the case with the Royal Canadian Mounted Police (RCMP) and the Canadian Security Intelligence Service (CSIS). There are three CBSA units that have IBD status to request information under this provision and they are identified in [Schedule II](#): Inland Enforcement Division, Intelligence and Targeting Operations Directorate, and Criminal Investigations Division. Intelligence and Targeting Operations Directorate is also identified in [Schedule III](#) as an investigative body for the purpose of severing (removing) information from Access to Information and Privacy (ATIP) requests.
9. Please note that units making IBD requests may not have their current name listed in Schedule II due to reorganization and/or realignments. Parliament introduced the [Public Service Rearrangement and Transfer of Duties Act](#) to address this type of situation. This legislation states that if a unit has the same powers, duties or functions of its predecessor unit, those powers, duties or functions are transferred to the new unit. This means that if a requester states that they are the legacy unit of one listed in Schedule II, then they have IBD status. However, new sections, powers, duties or functions added to an existing investigative body after designation cannot expand the scope of the designated investigative body. Please see the [Policy and Procedures – Investigative Body Designation](#) for more details.
10. The National Security Screening Division (NSSD) is no longer a part of the Intelligence and Targeting Operations Directorate (ITOD), but will continue to perform the same duties and functions in its new directorate. Although this new directorate does not have IBD status, the NSSD will continue to be authorized to receive information pursuant to a request under paragraph 8(2)(e) as per the *Public Service Rearrangement and Transfer of Duties Act*.
11. The CBSA cannot be compelled to disclose information. The *Privacy Act* clearly states that the institution “may” disclose, not that it “must” or “shall” disclose.
12. Customs information cannot be disclosed under the *Privacy Act*, it may only be disclosed under the *Customs Act*, as outlined in the [Policy on the Disclosure of Customs Information – Section 107 of the Customs Act](#). Section 107 of the *Customs Act* does not have a similar provision that can be used to disclose customs information. However, section 107(5)(a) of the *Customs Act* may apply, although the requester must be a peace officer investigating an indictable offence.
13. Please note that IBD **can** be used to collect Government of Canada employee information, as that is considered “human resource” information and not an agency’s mandate information. Therefore, disclosure of employee information is governed by the *Privacy Act* and not an agency’s mandate’s more restrictive disclosure regime (if it exists). For example, while the RCMP cannot use its IBD status to request customs information from the CBSA (since the *Customs Act* has its own disclosure regime), the RCMP could use its IBD status to request information on a CBSA employee, as part of any investigation into that individual employee.

EXAMPLES

14. CSIS has submitted an IBD request in writing for the different names and dates-of-birth for a number of individuals as part of a lawful investigation into their identity, their arrival, and their intentions in Canada for national security reasons. Their authority to collect this information is section 12 of the *CSIS Act*. Since CSIS as a whole is an Investigative Body under Schedule II of the *Privacy Regulations*, the CBSA may disclose the information to CSIS.



15. Transport Canada's Investigative Unit performs investigative duties related to granting security clearances for employees to work at Canadian airports. Although they perform investigative duties for their department, they do not have IBD status. Schedule II of the *Privacy Regulations* lists "Canada Ports Corporation Police and Security, Department of Transport" as having IBD status, but this unit no longer exists. Some of its duties have been transferred to the current TC Investigative Unit, but the new unit has different powers and authorities, and would not qualify under the *Public Service Rearrangement and Transfer of Duties Act*. Therefore, personal information cannot be released to them under this provision.
16. The CRA Criminal Investigations Division: Enforcement and Disclosure Directorate is not listed under Schedule II of the *Privacy Act Regulations* as being an investigative body. However, the CBSA is satisfied with CRA's statement that their Special Enforcement Program Audit is part of a successor organization of the original "Audit Directorate, Revenue Canada Taxation" named on the Schedule and hence the information could be disclosed to them under IBD for tax audit purposes.

APPROVAL TABLE – 8(2)(e)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	n/a
Regions	Operations	All Areas	Chief, Manager or Assistant Director, as applicable	n/a



8(2)(f)

GOVERNMENT OF A PROVINCE, OF FOREIGN STATES AND OF FIRST NATIONS

LEGISLATION

8(2) – Where personal information may be disclosed

Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed:

- (f) under an agreement or arrangement between the Government of Canada or an institution thereof and the government of a province, the council of the Westbank First Nation, the council of a participating First Nation – as defined in subsection 2(1) of the *First Nations Jurisdiction over Education in British Columbia Act* - , the government of a foreign state, an international organization of states or an international organization established by the governments of states, or any institution of any such government or organization, for the purpose of administering or enforcing any law or carrying out a lawful investigation;

SUMMARY

1. Paragraph 8(2)(f) allows for information to be disclosed as described/outlined in a written collaborative agreement or arrangement (WCA) between an institution of the Government of Canada and another party that is not part of the Government of Canada for the purpose of administering or enforcing any law or carrying out a lawful investigation.

CONSIDERATIONS

2. The WCA is there to formalize an agreed-upon process for exchanging/sharing information between institutions and is in place to ensure consistency across the country and over time.
3. A WCA between the Government of Canada and a party that is not part of the Government of Canada (i.e. a province, a foreign state, etc.) becomes a lawful authority to disclose as per this provision.
4. For this provision, a WCA between federal institutions **does not** meet the criteria and as such, a WCA by itself is not a lawful authority to disclose information between federal institutions.
5. Disclosures under this provision may only be made in accordance with a formal written collaborative agreement or arrangement. For this provision to apply, the disclosure needs to meet the criteria described in the WCA.
6. Please note that most WCAs are not legally binding, and they do not have the force of law. Treaties are legally binding. If there is a conflict, or potential conflict, between the *Privacy Act* and a Treaty regarding information disclosure, CBSA Legal Services must be consulted.
7. If the WCA outlines a procedure for disclosures of information, that is the process that should be followed. In the absence of such a procedure detailing the request process in the WCA, a written request is the preferred method for disclosure requests.
8. A summary of most existing WCAs with the CBSA's federal, provincial, territorial and international partners has been consolidated in the [WCA Toolkit](#).
9. The requester must provide the name of the statute they are administering or enforcing **and** the specific section (or subsection, paragraph, subparagraph, clause or subclause, if necessary) within the statute that is being administered or enforced. Please note that this information is required to verify the requester's authority to collect the information.



10. The CBSA cannot be compelled to disclose information. The *Privacy Act* clearly states that the institution “may” disclose, not that it “must” or “shall” disclose.
11. Customs information cannot be disclosed under the *Privacy Act*, it may only be disclosed under the *Customs Act*, as outlined in the [Policy on the Disclosure of Customs Information – Section 107 of the Customs Act](#). Section 107 of the *Customs Act* has a similar provision that can be used to disclose customs information, paragraph 107(8). Please note that this *Customs Act* provision only applies to WCAs with foreign governments or international organizations.

EXAMPLES

12. A provincial health ministry is conducting an investigation to determine whether an individual is eligible for that province’s medical plan, specifically the provision in their provincial legislation that requires that the individual must be a resident of that province in order to qualify. The ministry is requesting the status of the individual in order to conduct a lawful investigation to determine if that individual meets the definition of a “resident” as defined under their legislation. Since this provincial health ministry is an institution under a provincial government, and if a written agreement exists between this provincial government and the government of Canada (including any institutions thereof, of either government, such as the CBSA) for disclosing personal information for the purpose of carrying out a lawful investigation, then the CBSA could disclose the requested information.
13. US Customs & Border Protection (CBP) is requesting the status of an individual entering the US to be able to verify if the traveller is a legitimate visitor and that they would be leaving the US after their visit. The individual is a refugee claimant in Canada. As there is a WCA in place for the administration or enforcement of their respective citizenship and immigration laws, including an annex specifically regarding sharing refugee information, the CBSA could disclose the status of the refugee claimant to the US CBP.
14. The US Federal Bureau of Investigation (FBI) requests immigration related information (such as fingerprints, photos, travel documents, contents of pockets) held by the CBSA on an individual previously deported from Canada. Unfortunately, the FBI and the CBSA do not currently have an agreement in place where the CBSA is authorized to disclose information to the FBI. As a result, the CBSA is not able to share the information with the FBI.

APPROVAL TABLE – 8(2)(f)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	Director
Regions	Operations	All Areas	Chief or Manager	Assistant Director or Director
Exceptions:				
National Headquarters	Operations	National Border Operations Centre	Supervisor	Manager
Region	Operations	International Region	Liaison Officer	Senior Liaison Officer or Regional Director
If a specific WCA identifies a different level for approving disclosures, then please use the disclosure level listed for that particular WCA. If no level is specified in the WCA, then the disclosure levels indicated in this table will apply.				



8(2)(g)

PROVISION OF INFORMATION TO A MEMBER OF PARLIAMENT

LEGISLATION

8(2) – Where personal information may be disclosed

Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed:

(g) to a member of Parliament for the purpose of assisting the individual to whom the information relates in resolving a problem;

SUMMARY

1. Information about an individual may be disclosed to a federal Member of Parliament (MP) provided that the MP is seeking to assist that individual to whom the information pertains in resolving a problem.

CONSIDERATIONS

2. This provision does not limit the MP from only obtaining information to assist a constituent in his or her own riding, but permits the MP to obtain information to assist anyone regardless of the geographic location of that individual or their status in Canada.
3. Usually individuals contact an MP for assistance. However, the MP is not restricted in waiting to respond to a request for aid, but can initiate the process themselves.
4. It is important to remember that the information disclosed must **only** relate, or be about the individual to whom that information pertains, and not about any other individual, including other family members.
5. The MP's staff may submit these requests. Since the staff are deemed to be an agent for the MP, and are acting under the direction of the MP, the information may be disclosed to the MP's staff.
6. This provision ceases to be in effect when Parliament has been dissolved after an election has been called. It does not come into effect again until the new MPs are sworn in.
7. During elections, disclosures may continue to the riding office, but only if the office has obtained consent rather than under the authority of section 8(2)(g).
8. To ensure that the MP or MP's office does not further disclose personal information without the consent of the person to whom the information relates, a caveat should be placed when sharing the information to indicate this condition.
9. The CBSA cannot be compelled to disclose information, even to an MP or MP's office under this provision. The *Privacy Act* clearly states that the institution "may" disclose, not that it "must" or "shall" disclose.
10. Customs information cannot be disclosed under the *Privacy Act*, it may only be disclosed under the *Customs Act*, as outlined in the [Policy on the Disclosure of Customs Information – Section 107 of the Customs Act](#). Section 107 of the *Customs Act* **does not** have a similar provision that can be used to disclose customs information.



EXAMPLES

11. A daughter contacts her MP on behalf of her foreign mother to inquire why her mother is having difficulty obtaining a travel visa to Canada. The MP may request any information the CBSA has on the mother in order to aid the mother, and the CBSA may choose to provide the mother's information to the MP. However, the information relating to the mother that was provided to the MP **cannot** be disclosed to the daughter by the CBSA or by the MP unless the mother has granted her consent to disclose the information to her daughter. The MP is aiding the mother, not the daughter.
12. Sam contacts the MP for assistance to find out where their ex-spouse Pat is living because Pat is in arrears for support payments (i.e. Pat has failed to make spousal and/or child support payments). The MP, in seeking to aid Sam, who is in need of the support payments, makes a request to the CBSA for Pat's information. However, Pat's information cannot be disclosed to the MP because the MP is not seeking to aid Pat (i.e. the person to whom the information relates); instead the MP is seeking to aid Sam. In this instance, the information the MP is requesting does not relate to the person that the MP is seeking to aid.

APPROVAL TABLE – 8(2)(g)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	n/a
Regions	Operations	All Areas	Chief, Manager or Assistant Director, as applicable	n/a



8(2)(h)

INTERNAL AUDIT PURPOSES

LEGISLATION

8(2) – Where personal information may be disclosed

Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed:

(h) to officers or employees of the institution for internal audit purposes, or to the office of the Comptroller General or any other person or body specified in the regulations for audit purposes;

SUMMARY

1. Paragraph 8(2)(h) explicitly allows for personal information held by a federal institution to be disclosed to that federal institution's internal auditors, the Comptroller General of Canada, and anyone else authorized under regulation.
2. Paragraph 8(2)(h) also allows personal information to be disclosed to the Office of the Comptroller General of Canada for audit purposes as per the *Financial Administration Act* (FAA) and its *Regulations*.

CONSIDERATIONS

3. Please note that the Comptroller General of Canada has different powers and duties than the Auditor General of Canada (OAG). This provision **does not** apply to disclosing information to the OAG. Information may be disclosed to the OAG under 8(2)(b).
4. This provision explicitly allows for personal information to be disclosed to a federal institution's internal auditors.
5. The Comptroller General of Canada and their Office oversee the financial management, performance and compliance across the government of Canada. This is often done by way of audits.
6. Audits are not restricted to financial matters, but could include any subjects that can be recorded and/or measured, such as information sharing flows.
7. The Office of the Comptroller General of Canada derives its authority from the FAA, which is the act that provides for the financial administration of the Government of Canada. There are over four hundred regulations that support this act, and it is these regulations that are referred to in the text of paragraph 8(2)(h).
8. The requestor must provide the name of the statute they are administering or enforcing **and** the specific section (or subsection, paragraph, subparagraph, clause or subclause, if necessary) within the statute that is being administered or enforced, as well as the pertinent regulation if appropriate. Please note that this information is required to verify the requestor's authority to collect the information. Also note that if the requestor's authority derives from one of the regulations, they must also state that regulation and the specific section.



9. The CBSA cannot be compelled to disclose information. The *Privacy Act* clearly states that the institution “may” disclose, not that it “must” or “shall” disclose.
10. Customs information cannot be disclosed under the *Privacy Act*, it may only be disclosed under the *Customs Act*, as outlined in the [Policy on the Disclosure of Customs Information – Section 107 of the Customs Act](#). Section 107 of the *Customs Act* **does not** have a similar provision that can be used to disclose customs information. You may consider examining section 107(4)(f) of the *Customs Act* if the request is concerning the supervision, evaluation or discipline of a customs official.

EXAMPLES

11. The Internal Audit Division of the CBSA is conducting an audit of a directorate’s travel expenses, including travel advances, cheques issued, accommodations used and meal allowances claimed. The Executive Assistants in the directorate could disclose the requested information.
12. The Internal Audit and Program Evaluation Directorate of the CBSA is performing an audit on transborder data flows to be able to prepare an update for senior management on how the recommendations from the 2006 transborder data flows audit have been implemented. To be able to properly evaluate how transborder information is being disclosed, a certain amount of personal information will need to be collected by the auditors. Programs and Operations branches could disclose the requested information.

APPROVAL TABLE – 8(2)(h)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	n/a
Regions	Operations	All Areas	Chief, Manager or Assistant Director, as applicable	n/a



8(2)(i)

LIBRARY & ARCHIVES OF CANADA

LEGISLATION

8(2) – Where personal information may be disclosed

Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed:

(i) to the Library and Archives of Canada for archival purposes;

SUMMARY

1. Personal information that is no longer being used by the CBSA, but that is still relevant, that is, has an enduring value for Canada can be disclosed to the Library and Archives of Canada (LAC) so that the information can be preserved.

CONSIDERATIONS

2. The two main purposes of LAC that are pertinent to this provision are: to acquire and preserve the documentary heritage; and to facilitate the management of information by government institutions. LAC does so by working with the information management units of federal institutions. Both parties work to set up records disposition authorities to ensure that information having enduring value is transferred to LAC once it has met its retention limit at the CBSA. .
3. Program areas should work with the CBSA's Information Management division to establish retention schedules and documented disposition procedures to transfer the information to LAC.
4. This provision is usually used in a proactive manner, based on when the federal institutions no longer have operational need of the information but LAC has determined that the information has an enduring value.
5. This provision should be read in conjunction with subsection 8(3), as subsection 8(3) authorizes LAC to disclose information for research or statistical reasons if the Privacy Regulations permit the disclosure.
6. The CBSA cannot be compelled to disclose information. The *Privacy Act* clearly states that the institution "may" disclose, not that it "must" or "shall" disclose.
7. Customs information cannot be disclosed under the *Privacy Act*, it may only be disclosed under the *Customs Act*. Section 107 of the *Customs Act* **does not** have a similar provision that can be used to disclose customs information. However, please note that while section 107 does not have a provision that specifically authorizes disclosing customs information to LAC, paragraph 107(5)(b) **may** apply based on section 8 of the Library and Archives of Canada Act.



EXAMPLES

8. As per the schedule established with Information Management and the Enforcement and Intelligence Directorate of the Programs Branch, Enforcement and Intelligence Operations Directorate transfers several boxes of records to long-term storage. At this stage, those records are now archived with the private company under CBSA contract for records storage, however if the Enforcement and Intelligence Operations Directorate finds it has a need for those records, they can be retrieved from the storage provider. Once the records have reached the end of their retention period, the records are either destroyed or if the records have an enduring value, the records are transferred to LAC.

APPROVAL TABLE – 8(2)(i)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	Manager
Regions	Operations	All Areas	Chief, Manager or Assistant Director, as applicable	Chief, Manager or Assistant Director, as applicable



8(2)(j)

RESEARCH OR STATISTICAL PURPOSES

LEGISLATION

8(2) – Where personal information may be disclosed

Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed:

- (j) to any person or body for research or statistical purposes if the head of the government institution
 - (i) is satisfied that the purpose for which the information is disclosed cannot reasonably be accomplished unless the information is provided in a form that would identify the individual to whom it relates, and
 - (ii) obtains from the person or body a written undertaking that no subsequent disclosure of the information will be made in a form that could reasonably be expected to identify the individual to whom it relates;

SUMMARY

1. If the requested information for the research project or statistical analysis cannot avoid identifying an individual, it may still be possible to disclose the information **if**:
2. The person or body conducting the research or statistical analysis signs a legal document stating that they will not further disclose any information that could lead to the identification of an individual.

CONSIDERATIONS

3. Statistical information is not usually considered personal information since in most cases the information does not lead to the identification of an individual (i.e. the number of refugee claims received in 2012; the number of active immigration warrants; or the number of individuals removed from Canada to a specific country). However, for 8(2)(j), the individuals will be identified to the researchers.
4. The person or body conducting the research or statistical analysis must provide a rationale for the requested information that is strong enough to satisfy the head of the institution that the only way for their research or analysis to be valid is if personal information is disclosed to them.
5. Subparagraphs 8(2)(j)(i) and (ii) are meant to be considered jointly; once the head of the institution (or delegated official) is satisfied with the rationale, but before the information can be disclosed, the person or body requesting the information must sign a document stating that they will not further disclose any information that could lead to the identification of an individual. Please note that this signed document now becomes legally binding.
6. The CBSA cannot be compelled to disclose information. The *Privacy Act* clearly states that the institution “may” disclose, not that it “must” or “shall” disclose.



7. Customs information cannot be disclosed under the *Privacy Act*, it may only be disclosed under the *Customs Act*, as outlined in the Policy on the Disclosure of Customs Information – Section 107 of the *Customs Act*. Section 107 of the *Customs Act* **does not** have a similar provision that can be used to disclose customs information.

EXAMPLES

8. The University of Ottawa (U of O) is researching how a specific ethnic group is migrating around the world, how their traditions are either changing or being reinforced, and if they have integrated into the society of their host countries. The U of O indicates that to do the research, they require a large amount of personal information about any member of that ethnic group that has arrived in Canada over the past fifty years and that they will need to contact those individuals to interview them. The CBSA could disclose the requested information under the authority of paragraph 8(2)(j) if the U of O signed an undertaking to not disclose any information that could lead to the identification of any individuals. Please note that if the individuals provided consent to the U of O to disclose their information, the U of O could then disclose some or all of the information relating to those specific individuals.

APPROVAL TABLE – 8(2)(j)

Location	Branch	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	President's Office	President	President
National Headquarters	President's Office	Executive Vice-President	Executive Vice-President
National Headquarters	Corporate Affairs	Vice-President, Corporate Affairs	Vice-President, Corporate Affairs
National Headquarters	Corporate Affairs	Director General, Corporate Secretariat	Director General, Corporate Secretariat
National Headquarters	Corporate Affairs	Director, ATIP Division	Director, ATIP Division
National Headquarters	Corporate Affairs	Manager, ATIP Division	Manager, ATIP Division



8(2)(k)

ABORIGINAL GOVERNMENTS

LEGISLATION

8(2) – Where personal information may be disclosed

Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed:

(k) to any aboriginal government, association of aboriginal people, Indian band, government institution or part thereof, or to any person acting on behalf of such government, association, band, institution or part thereof, for the purpose of researching or validating the claims, disputes or grievances of any of the aboriginal peoples of Canada;

SUMMARY

1. Personal information may be disclosed to an official aboriginal group to help resolve claims, disputes or grievances of the aboriginal people of Canada.

CONSIDERATIONS

2. For the purposes of this provision, an “Indian band” is defined in subsection 8(6), an “aboriginal government” is defined in subsection 8(7) and the Council of the Westbank First Nation is defined in subsection 8(8) of the *Privacy Act*.
3. Subsection 35(2) of the *Charter’s* definition of the “aboriginal peoples of Canada” includes the Indian, Inuit and Métis peoples of Canada.
4. This provision contemplates formal claims, disputes and grievances brought by aboriginal people in their capacity as aboriginal people.
5. This provision **does not** apply to claims, disputes or grievances **between** aboriginal people.
6. This provision **does not** allow for aboriginal law enforcement groups to request or use this information for the administration or enforcement of federal, provincial or municipal laws.
7. This provision permits the disclosure of personal information to researchers acting on behalf of aboriginal people where they are involved in the process of settling aboriginal claims, disputes or grievances. It is recommended that researchers involved in researching aboriginal claims provide identification, a Band Council Resolution or a letter authorizing them to conduct such research and to have access to files pertaining to the First Nation’s claims research. The resolution or the letter would normally identify:
 - (a) the researcher’s name and organization;
 - (b) the reserve, the band and the province or territory;
 - (c) the requested subjects, clearly specifying the nature of the research; and
 - (d) the signature of the Chief and Council (in a quorum).
8. Most requests by researchers acting on the behalf of aboriginal people will be directed to Aboriginal Affairs and Northern Development Canada.



9. If a CBSA official is unsure whether a specific aboriginal group would meet the standards for this provision to apply to them, that official is encouraged to raise the question with the CBSA's Legal Services Unit.
10. The CBSA cannot be compelled to disclose information. The *Privacy Act* clearly states that the institution "may" disclose, not that it "must" or "shall" disclose.
11. Customs information cannot be disclosed under the *Privacy Act*, it may only be disclosed under the *Customs Act*, as outlined in the Policy on the Disclosure of Customs Information – Section 107 of the *Customs Act*. Section 107 of the *Customs Act* **does not** have a similar provision that can be used to disclose customs information.

EXAMPLES

12. A First Nation has a grievance with the Government of Canada due to its belief that the CBSA is refusing to allow band members who are not Canadian citizens to enter Canada and the Canadian portion of the First Nation Reservation. The First Nation has engaged the services of a consultant to research the issues that band members have been having entering Canada and the reasons that they have been found inadmissible to Canada. The researcher submits a request for information on a large number of band members, requesting the FOSS records, inadmissibility reports, allowed-to-leave reports and any other relevant records. The CBSA could disclose the requested information under the authority of paragraph 8(2)(k).
13. An individual who is a Status Indian is having a dispute with a neighbour on the reservation, and to help resolve the dispute in their favour has requested their neighbour's immigration file from the CBSA. As the requester does not meet the criteria for this provision to apply, no information could be disclosed.

APPROVAL TABLE – 8(2)(k)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	Director
Regions	Operations	All Areas	Chief or Manager	Assistant Director or Director



8(2)(l)

DEBT OWED TO OR BY THE CROWN

LEGISLATION

8(2) – Where personal information may be disclosed

Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed:

- (l) to any government institution for the purpose of locating an individual in order to collect a debt owing to Her Majesty in right of Canada by that individual or make payment owing to that individual by Her Majesty in right of Canada;

SUMMARY

1. Paragraph 8(2)(l) allows government institutions to disclose an individual's contact information to other government institutions if that individual has a debt owing to the Crown or if the government owes a refund or financial benefit to that individual.

CONSIDERATIONS

2. The intention of paragraph 8(2)(l) is for locating individuals for the purpose of:
 - (i) collecting a debt owed to the Crown from that individual;
 - (ii) paying government benefits or refunds owed to that individual.
3. Government institutions requesting personal information to locate an individual should clearly specify what type of debt is owed by the individual, or what type of benefit is to be paid to the individual.
4. The amount of information disclosed should be limited to only what is necessary to locate the individual.
5. This provision **does not** permit the disclosure of information for the purpose of determining whether a debt is owed by an individual to the Crown.
6. For payments owed to an individual by the Crown, the intention is to expedite the payment of refunds or government benefits to that individual.
7. In the case of the Crown owing a refund or benefit to an individual, CBSA officials should consider providing the other government institution's contact information to the individual rather than disclosing the individual's contact information, providing it will not cause an undue burden on the CBSA or unnecessarily delay the refund or benefit cheque.
8. The CBSA cannot be compelled to disclose information. The *Privacy Act* clearly states that the institution "may" disclose, not that it "must" or "shall" disclose.
9. Customs information cannot be disclosed under the *Privacy Act*, it may only be disclosed under the *Customs Act*, as outlined in the Policy on the Disclosure of Customs Information – Section 107 of the Customs Act. Section 107 of the *Customs Act* has a similar provision that can be used to disclose customs information, paragraph 107(5)(g).



EXAMPLES

10. The Canada Revenue Agency (CRA) is seeking a non-Canadian who is in Canada on a work permit and has not paid their income tax. The CRA believes that the CBSA may have an address for the individual. The CBSA could disclose the address and/or other contact information to CRA.
11. The CRA wishes to issue a refund cheque to a CBSA employee for an overpayment on income taxes, but does not have the individual's current address on file as the employee is no longer at the address that is on their last income tax return. The CBSA could disclose an updated address to CRA, or could forward the CRA official's contact information to the CBSA employee.

APPROVAL TABLE – 8(2)(f)

Location	Branch	Directorate / Area	REQUEST-BASED disclosure	PROACTIVE disclosure
National Headquarters	All	All Directorates	Manager	Director
Regions	Operations	All Areas	Chief or Manager	Assistant Director or Director



8(2)(m)(i)

PUBLIC INTEREST DISCLOSURE

LEGISLATION

8(2) – Where personal information may be disclosed

Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed:

(m) for any purpose where, in the opinion of the head of the institution,

- (i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure

SUMMARY

1. Subparagraph 8(2)(m)(i) allows the head of the institution to disclose personal information if they believe that the public interest in having that information measurably outweighs the privacy rights of the individual(s) to whom the information pertains.

CONSIDERATIONS

2. The Operating Procedures for Public Interest Disclosures under 8(2)(m)(i) of the Privacy Act outline a general process used to assess the interest to the public against the perceived injury to the privacy of the individual. It ensures that CBSA officials undertake consultations with necessary stakeholders, conduct the necessary tests, and prepare the CBSA for potentially negative reactions to the disclosure. CBSA officials must complete the matrix in this operating procedure and consult with the appropriate stakeholders when considering a disclosure under this provision.
3. “Interest” means that the public must derive some benefit, such as a significant health or safety issue. “Interest” **does not** include information that may be “interesting” to the public, **nor** does simple curiosity on the part of the public constitute a “public interest”.
4. A “public” interest may apply to a large group of people, or to just one person.
5. Prior to considering a public interest disclosure, CBSA officials should examine all the other provisions under section 8 of the *Privacy Act*, including obtaining consent, if possible.
6. In deciding whether or not to disclose information under this provision, the head of the institution (or delegated official) must weigh the public interest in disclosure against the potential injury to an individual's privacy.
7. Subparagraph 8(2)(m)(i) must be considered in conjunction with subsection 8(5), Notice of Disclosure Under Paragraph 8(2)(m). In short, the head of the institution (or delegated official) must notify the Privacy Commissioner of any disclosure of personal information under paragraph 8(2)(m) prior to the disclosure or, if this is not possible, as soon as possible after the disclosure.



8. When personal information is disclosed under the public interest provision, the CBSA should include the following in its notification to the Privacy Commissioner:
 - (a) the name of the individual(s) involved (and if known, their contact information);
 - (b) a description of the information being disclosed, and if appropriate, a copy of the information being disclosed;
 - (c) the date that the CBSA intends to disclose the information;
 - (d) the rationale for the disclosure and a statement as to why the public interest overrides privacy in this particular instance;
 - (e) the identity of the individual(s) or organization(s) to whom the information is being disclosed;
 - (f) the manner in which the information is being disclosed; and
 - (g) the name and signature of the person approving the disclosure.
9. The disclosure must be recorded and reported to the Access To Information and Privacy (ATIP) office so that they may report the number of all 8(2)(m) disclosures in the ATIP Annual Reports to Parliament.
10. The CBSA cannot be compelled to disclose information. The *Privacy Act* clearly states that the institution “may” disclose, not that it “must” or “shall” disclose.
11. Customs information cannot be disclosed under the *Privacy Act*, it may only be disclosed under the *Customs Act*, as outlined in the [Policy on the Disclosure of Customs Information – Section 107 of the Customs Act](#). Section 107 of the *Customs Act* has a similar provision that can be used to disclose customs information, paragraph 107(6)(a).

EXAMPLES

12. Canada has been asked to extradite an individual who is in Canada but has been charged with war crimes in a foreign country. The individual has fought the extradition order in Canadian courts. The case has been extensively talked about in the media, both here in Canada and in that foreign country, on talk-shows, and has even been discussed in Parliament. The individual has spoken with media, discussed their fight against the extradition and their upcoming removal. The CBSA could disclose the fact that the individual was removed after the removal under this provision as the detailed and specific knowledge of the individual's case and file are already in the public domain.
13. An individual dies while being detained in a CBSA immigration holding centre. The individual's spouse wants to know what happened, how the death occurred, and if there was anything that the CBSA could have done to prevent the death. The CBSA could disclose to the spouse the interactions that the deceased had with CBSA staff and/or CBSA holding centre staff in the days prior to the death of the individual since there is a “public interest” to the spouse in understanding the details surrounding the death of their loved one.
14. An individual was convicted of a series of crimes in Canada and their sentence is coming to an end. This individual has also been stripped of their permanent resident status after their conviction and is facing removal. In this individual's case, there has been no public interest or discussion about the case, nor has the media been following this story. The Region is considering disclosing under the public interest provision that the individual has been removed, however, when the 8(2)(m)(i) procedure/matrix is followed, it indicates that the public interest **does not** measurably outweigh the individual's privacy rights. As such, the information should not be disclosed under this provision.



APPROVAL TABLE – 8(2)(m)(i)

Location	Branch	May approve the disclosure
National Headquarters	President's Office	President
National Headquarters	President's Office	Executive Vice-President
National Headquarters	Corporate Affairs	Vice-President, Corporate Affairs
National Headquarters	Corporate Affairs	Director General, Corporate Secretariat
National Headquarters	Corporate Affairs	Director, ATIP Division



8(2)(m)(ii)

BENEFIT TO THE INDIVIDUAL

LEGISLATION

8(2) – Where personal information may be disclosed

Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed:

(m) for any purpose where, in the opinion of the head of the institution,

(ii) disclosure would clearly benefit the individual to whom the information relates.

SUMMARY

1. Subparagraph 8(2)(m)(ii) allows the head of the institution to disclose personal information if they believe that the disclosure will aid the individual to whom the information pertains.

CONSIDERATIONS

2. It is preferable that the officials seek to obtain consent before considering this provision. If consent is obtained from the individual, then the information could be released under subsection 8(1).
3. Subparagraph 8(2)(m)(ii) permits disclosure if it would clearly benefit the individual to whom the information relates. There must be a valid and tangible rationale shown, and that there should be a positive benefit.
4. Subparagraph 8(2)(m)(ii) must be considered in conjunction with subsection 8(5), Notice of Disclosure Under Paragraph 8(2)(m). In short, the head of the institution (or delegated official) must notify the Privacy Commissioner of any disclosure of personal information under paragraph 8(2)(m) prior to the disclosure or, if this is not possible, as soon as possible after the disclosure.
5. The disclosure must be recorded and reported to the Access To Information and Privacy (ATIP) office so that they may report the number of all 8(2)(m) disclosures in the ATIP Annual Reports to Parliament.
6. When personal information is disclosed under the benefit to the individual provision, the CBSA should include the following in its notification to the Privacy Commissioner:
 - (a) the name of the individual(s) involved (and if known, their contact information);
 - (b) a description of the information being disclosed, and if appropriate, a copy of the information being disclosed;
 - (c) the date that the CBSA intends to disclose the information;
 - (d) the rationale for the disclosure and a statement as to why the benefit to the individual overrides privacy in this particular instance;
 - (e) the identity of the individual(s) or organization(s) to whom the information is being disclosed;
 - (f) the manner in which the information is being disclosed; and
 - (g) the name and signature of the person approving the disclosure.



7. The CBSA cannot be compelled to disclose information. The *Privacy Act* clearly states that the institution “may” disclose, not that it “must” or “shall” disclose.
8. Customs information cannot be disclosed under the *Privacy Act*, it may only be disclosed under the *Customs Act*, as outlined in the Policy on the Disclosure of Customs Information – Section 107 of the *Customs Act*. Section 107 of the *Customs Act* has a similar provision that can be used to disclose customs information, paragraph 107(6)(b).

EXAMPLES

9. A convention refugee, who is now a permanent resident in Canada, is arrested in the European Union (EU) on an Interpol warrant issued by the foreign country from which the individual claimed refuge. The warrant is based on a conviction after the individual was granted refugee status. The CBSA is investigating whether the individual was tried *in absentia* or if the individual has committed crimes after being granted refugee status. The EU is preparing to extradite them to the foreign country. The CBSA could disclose to the EU that the individual is a convention refugee from that foreign country to prevent the extradition as it would clearly aid the individual in question.

APPROVAL TABLE – 8(2)(m)(ii)

Location	Branch	May approve the disclosure
National Headquarters	President’s Office	President
National Headquarters	President’s Office	Executive Vice-President
National Headquarters	Corporate Affairs	Vice-President, Corporate Affairs
National Headquarters	Corporate Affairs	Director General, Corporate Secretariat
National Headquarters	Corporate Affairs	Director, ATIP Division



8(3)

PERSONAL INFORMATION DISCLOSED BY LIBRARY & ARCHIVES OF CANADA

LEGISLATION

8(3) – Personal information disclosed by Library and Archives Canada

Subject to any other Act of Parliament, personal information under the custody or control of the Library and Archives of Canada that has been transferred there by a government institution for historical or archival purposes may be disclosed in accordance with the regulations to any person or body for research or statistical purposes.

SUMMARY

1. Personal information transferred to the Library and Archives of Canada (LAC) for historical or archival purposes may, in turn, be disclosed by LAC for research or statistical purposes if the [*Privacy Regulations*](#) and the legislation of the institution that provided the records permit its disclosure.

CONSIDERATIONS

2. Before LAC discloses any information under its custody or control, LAC should verify if the legislation of the institution that transferred the information to them permits for LAC to disclose the information for research and/or statistical purposes. LAC should also refer to and respect any conditions and restrictions spelled out in the records disposition authority.
3. It is preferable that personal information shared for statistical purposes not identify any individuals.



8(4)

COPIES OF REQUESTS UNDER PARAGRAPH 8(2)(e)

LEGISLATION

8(4) – Copies of requests under paragraph (2)(e) to be retained

The head of a government institution shall retain a copy of every request received by the government institution under paragraph (2)(e) for such period of time as may be prescribed by regulation, shall keep a record of any information disclosed pursuant to the request for such period of time as may be prescribed by regulation and shall, on the request of the Privacy Commissioner, make those copies and records available to the Privacy Commissioner.

SUMMARY

1. For every investigative body designation (IBD) request received under paragraph 8(2)(e), a copy of the request and a record of any disclosures must be kept by the institution for a minimum of two years from the last administrative action. Specific program areas may need to retain their records for longer periods of time.
2. While the records are retained by the institution, copies of the records must be provided to the Privacy Commissioner upon their request.

CONSIDERATIONS

3. Please note, that subsection 8(4) uses the wording “shall” and not “may”, therefore the CBSA is required to keep a copy of the request, and a copy of the disclosure. The CBSA is also required to provide copies of either the request or the disclosure to the Privacy Commissioner upon their request.
4. As per section 7 of the Privacy Regulations, a copy of each request for disclosure will be kept on record, regardless of whether the request resulted in a disclosure of personal information or not, and a record of the information that is disclosed. These records shall be retained for a minimum of two years.
5. A record of the information disclosed under paragraph 8(2)(e) must be kept. This disclosure should include:
 - (a) the names of the requester and requesting institution;
 - (b) whether information was disclosed or the request was refused;
 - (c) the date the request was received;
 - (d) the specific data elements that were disclosed;
 - (e) the name, title and signature of the official who approved the disclosure;
 - (f) the date of the disclosure.
6. As part of the annual reports to Parliament on Access to Information and Privacy, all federal institutions are required to report the number of IBD requests they received that year. At this time, Treasury Board does not require that the number of disclosures be reported as part of the Parliamentary Report.



8(5)

NOTICE OF DISCLOSURE UNDER PARAGRAPH 8(2)(m)

LEGISLATION

8(5) – Notice of disclosure under paragraph (2)(m)

The head of a government institution shall notify the Privacy Commissioner in writing of any disclosure of personal information under paragraph (2)(m) prior to the disclosure where reasonably practicable or in any other case forthwith on the disclosure, and the Privacy Commissioner may, if the Commissioner deems it appropriate, notify the individual to whom the information relates of the disclosure.

SUMMARY

1. The Head of the Institution of the CBSA (or delegated official) must notify the Privacy Commissioner in writing of any disclosures of personal information made under paragraph 8(2)(m).
2. When possible, the notification should be in writing and in advance of the disclosure, or as soon as possible after the disclosure if time constraints did not allow for prior notification.
3. The Privacy Commissioner may notify the individual to whom the information relates about the disclosure, if they feel it is appropriate to do so.

CONSIDERATIONS

4. This provision acts as a check upon use of paragraph 8(2)(m) by allowing the independent body responsible for protecting privacy rights in Canada (i.e., the Office of the Privacy Commissioner) the opportunity to consider the proposed disclosure and offer their opinion and recommendations to the institution before the disclosure is made.
5. The Privacy Commissioner may choose to notify the individual whose personal information is being disclosed without their consent under the provisions of paragraph 8(2)(m).
6. The Privacy Commissioner may also choose to include their concerns about the disclosure in their annual report to Parliament if the CBSA chooses not to address their concerns before disclosing the information.
7. When personal information is disclosed under the public interest provision or the benefit to the individual provision, the CBSA must include the following in its notification to the Privacy Commissioner:
 - (a) the name of the individual(s) involved (and if known, their contact information);
 - (b) a description of the information being disclosed, and if appropriate, a copy of the information being disclosed;
 - (c) the date that the CBSA intends to disclose the information;
 - (d) the rationale for the disclosure and a statement as to why the public interest overrides privacy in this particular instance or how the disclosure benefits the individual;
 - (e) the identity of the individual(s) or organization(s) to whom the information is being disclosed;
 - (f) the manner in which the information is being disclosed; and
 - (g) the name and signature of the person approving the disclosure.



EXAMPLES

8. The CBSA removed the alleged mafia boss, Mr. Gallo, to Italy. After completing the matrix in the 8(2)(m)(i) Procedures, which indicated that the public interest in the removal measurably outweighed Mr. Gallo's privacy rights, the delegated CBSA official approved the disclosure. The CBSA wrote to the Privacy Commissioner to advise them that the CBSA intended to disclose the fact that Mr. Gallo had been removed to Italy after the escorting officers returned to Canada. The Office of the Privacy Commissioner responded that they had no comments on the proposed disclosure. The CBSA disclosed the fact that the removal had taken place to the media after the return of the escorting officers.



8(6), 8(7) and 8(8) – DEFINITIONS

DEFINITION OF “INDIAN BAND”, “ABORIGINAL GOVERNMENT”, “WESTBANK FIRST NATION”

LEGISLATION

8(6) – Definition of “Indian band”

In paragraph (2)(k), “Indian band” means

- (a) a band, as defined in the Indian Act;
- (b) a band, as defined in the Cree-Naskapi (of Quebec) Act, chapter 18 of the Statutes of Canada, 1984;
- (c) the Band, as defined in the Sechelt Indian Band Self-Government Act, chapter 27 of the Statutes of Canada, 1986; or
- (d) a first nation named in Schedule II to the Yukon First Nations Self-Government Act.

8(7) – Definition of “aboriginal government”

The expression “aboriginal government” in paragraph (2)(k) means

- (a) Nisga’a Government, as defined in the Nisga’a Final Agreement given effect by the Nisga’a Final Agreement Act;
- (b) the council of the Westbank First Nation;
- (c) the Tlicho Government, as defined in section 2 of the Tlicho Land Claims and Self-Government Act;
- (d) the Nunatsiavut Government, as defined in section 2 of the Labrador Inuit Land Claims Agreement Act;
- (e) the council of a participating First Nation as defined in subsection 2(1) of the First Nations Jurisdiction over Education in British Columbia Act;
- (f) the Tsawwassen Government, as defined in subsection 2(2) of the Tsawwassen First Nation Final Agreement Act; or
- (g) a Maanulth Government, within the meaning of subsection 2(2) of the Maanulth First Nations Final Agreement Act.

8(8) – Definition of “council of the Westbank First Nation”

The expression “council of the Westbank First Nation” in paragraphs (2)(f) and (7)(b) means the council, as defined in the Westbank First Nation Self-Government Agreement given effect by the Westbank First Nation Self-Government Act.

SUMMARY

1. Subsection 8(6) provides references to the legislation that defines the term “Indian band” used in paragraph 8(2)(k).
2. Subsection 8(7) provides references to the legislation that defines the term “aboriginal government” used in paragraph 8(2)(k).
3. Subsection 8(8) provides references to the legislation that defines the term “Council of the Westbank First Nation” used in paragraph 8(2)(k).



CONSIDERATIONS

4. The term "First Nation" is widely used despite the absence of a legal definition. Among its uses, the term "First Nations" refers to the Indian people in Canada, both Status and non-Status. Many bands today prefer to be called "First Nations" and have incorporated the term "First Nation" into their band names. The *Indian Act* currently refers to First Nations as "Indians".
5. The term "Indian" is in continued use for legal reasons, namely that such terminology is recognized in the *Indian Act* and is used by the Government of Canada when making reference to this particular group of Aboriginal people.
6. If there is any doubt as to whether a specific group meets the definitions of "Indian band", "aboriginal government", or "Council of the Westbank First Nation" the CBSA's Legal Services Unit should be consulted.



APPENDIX A

TERMINOLOGY

Access

- The opportunity to obtain information or view records held by a government institution.

Administer

- To interpret and apply the provisions of an Act or Regulation in an administrative capacity (for example: determining the amount of duty to be paid to import an item, or to issue a visitor record to a foreign national at a port of entry).

Biographical Core of Personal Information (aka: Core Biographical Data)

- The term Biographical Core of Personal Information was introduced by the Supreme Court of Canada (SCC). The biographical core of personal information includes information about an individual's lifestyle or personal choices which individuals in a free and democratic society would wish to maintain and control from dissemination to the state. Even if the state does collect the information, individuals would expect that the state would not further disseminate that information. Please note that the SCC has also stated that the Biographical Core of Personal Information varies according to context.

CBSA Official

- Any individual who is in the service of or working on the behalf of the CBSA, such as indeterminate employees, term employees, casuals, contractors, etc. This may include individuals who are working for another federal institution, if they are doing work for the CBSA.

Customs information

- This is information of any kind and in any form that:
 - (a) relates to one or more persons and is obtained by or on behalf of:
 - (i) the Minister of Public Safety and Emergency Preparedness for the purposes of the administration of the *Customs Act* or the *Customs Tariff*; or
 - (ii) the Minister of National Revenue for the purposes of the collection of debts due to Her Majesty under Part V.1 of the *Customs Act*;
 - (b) is prepared from information described in paragraph (a).

If information is collected for the purpose of administering or enforcing the *Customs Act* or the *Customs Tariff*, that information is considered "customs information."

Disclose

- To provide or release information in any form (including, but not limited to: hard copy, electronic, video, verbal, etc).

E&I Officer (Enforcement & Intelligence Officer)

- For the purpose of this Policy, an E&I Officer is a CBSA employee who occupies a position as a Criminal Investigator, an Inland Enforcement Officer, a Hearings Officer, an Intelligence Officer, an Intelligence Analyst or an Intelligence Advisor.

Enforce

- To interpret and apply the provisions of an Act or Regulation to determine if punitive measures are required, and if so, to apply those punitive measures (for example: seizure of illegal goods; investigating a potential infraction of the law; or removing someone from Canada).



Federal Government Institution

- According to the definition of government institution in section 3 of the *Privacy Act*, “government institution” means any department of ministry of state of the Government of Canada, or any body or office, listed in the [schedule I of the Privacy Regulations](#), and any parent Crown corporation, and any wholly owned subsidiary of such a corporation, within the meaning of section 83 of the *Financial Administration Act*.

Information

- This means data held in any form, such as hardcopies (paper), electronic databases, video recordings, audio recordings, and electronic files on storage devices such as disks or memory sticks.

Investigative Body Designation (IBD)

- This is a government agency or body granted the designation of an “Investigative Body” listed in [Schedule II of the Privacy Regulations](#) and to whom information can be disclosed to under paragraph 8(2)(e) of the *Privacy Act*.

Personal Information

- Under the [Privacy Act, section 3](#), personal information refers to information about an identifiable individual that is recorded in any form including, without restricting the generality of the foregoing:
 - (a) information relating to the race, national or ethnic origin, colour, religion, age or marital status of the individual,
 - (b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
 - (c) any identifying number, symbol or other particular assigned to the individual,
 - (d) the address, fingerprints or blood type of the individual,
 - (e) the personal opinions or views of the individual except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual by a government institution or a part of a government institution specified in the regulations,
 - (f) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence,
 - (g) the views or opinions of another individual about the individual,
 - (h) the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual by an institution or a part of an institution referred to in paragraph (e), but excluding the name of the other individual where it appears with the views or opinions of the other individual, and
 - (i) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual.

Personal information does **not** include:

- (j) information about an individual who is or was an officer or employee of a government institution that relates to the position or functions of the individual including,
 - (i) the fact that the individual is or was an officer or employee of the government institution,
 - (ii) the title, business address and telephone number of the individual,
 - (iii) the classification, salary range and responsibilities of the position held by the individual,
 - (iv) the name of the individual on a document prepared by the individual in the course of employment, and
 - (v) the personal opinions or views of the individual given in the course of employment,
- (k) information about an individual who is or was performing services under contract for a government institution that relates to the services performed, including the terms of the contract, the name of the individual and the opinions or views of the individual given in the course of the performance of those services,
- (l) information relating to any discretionary benefit of a financial nature, including the granting of a licence or permit, conferred on an individual, including the name of the individual and the exact nature of the benefit, and
- (m) information about an individual who has been dead for more than twenty years;



Privacy Impact Assessment (PIA)

- A PIA refers to a comprehensive questionnaire established by the Treasury Board of Canada Secretariat (TBS) to assist Government of Canada institutions in identifying the privacy risks associated with program and service delivery initiatives that involve the collection, use or disclosure of personal information. A PIA helps institutions to ensure that appropriate steps are taken to mitigate any privacy-related risks prior to the commencement of an information collection program or activity.

Provision

- This means a specific clause in the legislation. For example: the 8(2)(a) clause may be referred to as the Consistent Use provision or the 8(2)(a) provision.

Reasonable Expectation of Privacy (REP)

- The Supreme Court of Canada (SCC) has identified an individual's reasonable expectation of privacy (REP) as a fundamental right under the *Canadian Charter of Rights and Freedoms* (the *Charter*). The SCC has also stated that information sharing is equivalent to "search and seizure" and subject to section 8 of the *Charter*. Whether a person has a reasonable expectation of privacy will be dependent on an assessment of the **totality of the circumstances** surrounding the collection of information about that person, including the state's proposed use, or the disclosure of the information. An individual's REP is said to be **engaged** when the person either **does not** expect a government institution to collect the information, or if it was collected, the person would **not** expect the information to be further disclosed. Please note that while the SCC has further stated that a person's reasonable expectation of privacy is lessened at an international border, it is still present.
- "The guarantee of security from unreasonable search and seizure only protects a reasonable expectation. This limitation on the right guaranteed by s. 8, whether it is expressed negatively as freedom from "unreasonable" search and seizure, or positively as an entitlement to a "reasonable" expectation of privacy, indicates that an assessment must be made as to whether in a particular situation the public's interest in being left alone by government must give way to the government's interest in intruding on the individual's privacy in order to advance its goals, notably those of law enforcement." *Hunter et al. v Southam Inc.*, [1984] 2 S.C.R. 145 at page 159-160.

Tombstone Data

- This refers to the basic data elements that allow for the accurate identification of an individual and usually comprises of a person's name, date of birth, and gender (although identification number, place of birth and contact information, such as address, are often included). Under normal circumstances, tombstone data generally carries a low risk in engaging a person's REP, however this is ultimately context-dependent.

Third Party Information

- **Common definition:** this refers to information about or received from a party outside of the CBSA (for example, information received from another government institution, or information about another individual).
- **Access to Information Act (ATIA) definition:** this means "any person, group of persons or organization other than the person that made the request or a government institution" in respect of a request for access to a record under the ATIA. In effect, this means information received from a party outside of the Government of Canada.



Written Collaborative Arrangement (WCA)

- For the purpose of this policy and the CBSA WCA policy, a WCA is a formal, written, non-legally binding document between two or more participants that outlines the terms and conditions under which personal information may be shared between the participants. WCAs may take the form of a Memorandum of Understanding, Statement of Mutual Understanding, Letter of Understanding, Letter of Intent, or Letter of Amendment.
- WCAs do not include treaties and other international instruments that are legally binding under public international law.
- If there are any doubts about whether a WCA is legally binding or not, the Written Collaborative Agreements/Arrangements Unit should be contacted (wca-ece@cbsa-asfc.gc.ca).



APPENDIX B

9(1), 9(2), 9(3) and 9(4)

RECORD OF DISCLOSURE

LEGISLATION

9(1) – Record of disclosures to be retained

The head of a government institution shall retain a record of any use by the institution of personal information contained in a personal information bank or any use or purpose for which that information is disclosed by the institution where the use or purpose is not included in the statements of uses and purposes set forth pursuant to subparagraph 11(1)(a)(iv) and subsection 11(2) in the index referred to in section 11, and shall attach the record to the personal information.

9(2) – Limitation

Subsection (1) does not apply in respect of information disclosed pursuant to paragraph 8(2)(e).

9(3) – Record forms part of personal information

For the purposes of this Act, a record retained under subsection (1) shall be deemed to form part of the personal information to which it is attached

9(4) – Consistent uses

Where personal information in a personal information bank under the control of a government institution is used or disclosed for a use consistent with the purpose for which the information was obtained or compiled by the institution but the use is not included in the statement of consistent uses set forth pursuant to subparagraph 11(1)(a)(iv) in the index referred to in section 11, the head of the government institution

- (a) forthwith notify the Privacy Commissioner of the use for which the information was used or disclosed; and
- (b) ensure that the use is included in the next statement of consistent uses set forth in the index.

SUMMARY

1. Subsection 9(1) states that all uses of personal information must be recorded, and unless the disclosure is listed as a consistent use in Info Source, the disclosure must be recorded.
2. Subsection 9(2) states that subsection 9(1) does not apply to disclosures made under the authority of paragraph 8(2)(e) – Investigative Body Designation (IBD). However, subsection 8(4) has more stringent recording requirements for paragraph 8(2)(e) requests and disclosures than most other disclosures made under subsection 8(2).
3. Subsection 9(3) states that use or disclosure of personal information becomes part of the personal information of the individual to whom it relates. In essence, this means that what the CBSA does with the information about an identifiable individual and to whom the CBSA may have disclosed it becomes part of the personal information about that individual, as per the definition of personal information. Furthermore, as per



subsection 12(1), the individual has a right of access to know what use and to whom their information has been disclosed to.

4. Subsection 9(4) states that if the institution discovers a new consistent use, the institution must notify the Privacy Commissioner of the new use and update the Info Source entry.

CONSIDERATIONS

5. The recording of the disclosure does not necessarily mean keeping an entire copy of the personal information that was disclosed; at a minimum, it means recording what elements of that personal information were disclosed, when the information was disclosed and to whom. For example, indicating that a copy of "incident report #123" was disclosed to local police is recording the data element that was disclosed versus keeping a copy of the entire ten page incident report as part of the record of disclosure.
6. Section 9 of the *Privacy Act* requires that all disclosures of personal information be recorded. For most cases, the record is to be kept for a minimum of two years (as per [section 4 of the Privacy Regulations](#)). Please note that each program and operational area may have their own retention periods which may extend beyond the minimum two year requirement.
7. Disclosure with consent must be recorded, unless it is listed as a consistent use in the PIB.
8. The recording of a disclosure of information allows for the updating and correcting of information by the institution to those to whom the information was disclosed or provided. Without this check, it is possible to overlook providing updates to the institutions to whom that information was shared.
9. Please note that section 9 of the *Privacy Act* applies to customs information. Section 107 of the *Customs Act* governs the use and disclosure of customs information but only replaces section 8 of the *Privacy Act*. Section 107 of the *Customs Act* **does not** replace section 9 of the *Privacy Act*, therefore the **recording** provisions/requirements under section 9 remain applicable to customs information. In other words, disclosures of customs information under section 107 of the *Customs Act* **must** still be recorded as per section 9 of the *Privacy Act*.

EXAMPLES

10. The Immigration and Refugee Board (IRB) requests the CBSA enforcement file on a permanent resident who is being examined by the IRB to determine whether to revoke their permanent residency. As per subsection 9(1), the CBSA does not have to record the disclosure to the IRB as it is listed as a consistent use in "Enforcement Data System" (PPU CBSA 032) CBSA Info Source entry.
11. Due to a new program or legislation, the CBSA would have to use information it normally collects under existing programs in a new fashion, but believes that the new use is consistent with the purpose of the original collection. The CBSA would have to advise the Privacy Commissioner of the new use and then update the Info Source entry of the data bank that houses the information. Please note that it is likely that the Privacy Commissioner will have some comments on the new use, and that a Privacy Impact Assessment will also likely be required.



APPENDIX C

12(1) and 12(2)

RIGHT OF ACCESS

LEGISLATION

12(1) – Right of access

Subject to this Act, every individual who is a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act* has a right to and shall, on request, be given access to

- (a) any personal information about the individual contained in a personal information bank; and
- (b) any other personal information about the individual under the control of a government institution with respect to which the individual is able to provide sufficiently specific information on the location of the information as to render it reasonably retrievable by the government institution.

12(2) – Other rights relating to personal information

Every individual who is given access under paragraph (1)(a) to personal information that has been used, is being used or is available for use for an administrative purpose is entitled to

- (a) request correction of the personal information where the individual believes there is an error or omission therein; and
- (b) require that a notation be attached to the information reflecting any correction requested but not made; and
- (c) require that any person or body to whom that information has been disclosed for use for an administrative purpose within two years prior to the time a correction is requested or a notation is required under this subsection in respect of that information
 - (i) be notified of the correction or notation, and
 - (ii) where the disclosure is to a government institution, the institution make the correction or notation on any copy of the information under its control.

SUMMARY

1. For the purpose of subsection 12(1), **anyone** present in Canada has a right to access the personal information about them held by a government institution. Their request has to be specific enough that an employee of the institution would reasonably be able to find and retrieve the information. Please note that the *Privacy Act Extension Orders No. 1* and *No. 2* have extended the right of access to **anyone** present in Canada, and not just to Canadian citizens or permanent residents as originally listed in the *Privacy Act*.
2. Subsection 12(2) allows for individuals to have the government institution correct the information relating to them if the individual believes that there is an error in their information. If the institution does not believe that there is an error, the institution must place a note in the individual's file indicating that there was a request for correction and that the institution refused to make the correction. Furthermore, this subsection requires that institutions advise anyone to whom they have disclosed the information about the correction, or the fact that there was a records correction request that was refused.



CONSIDERATIONS

3. When individuals are requesting their information, the request needs to be sufficiently detailed that the information is reasonably retrievable by an employee.
4. An individual has the right to request that government institutions correct the information that the institution has on them.
5. A request for correction does not guarantee that the institution will change the file to reflect the requested correction. The institution which controls the information needs to determine if the correction is accurate and warranted.
6. A notation must be made to reflect any request for correction that was not made.
7. A notation of a request for correction now becomes part of the personal information, and must be included in the disclosure as part of the information for any future disclosures.
8. In either case, the correction request or notation of request must subsequently be transmitted to any person or body to whom that personal information was previously disclosed. This is to ensure that all relevant parties have access to, and are using, the same, most up-to-date and accurate personal information available. This also serves to reduce the chance that the individual will suffer negative consequences due to the inaccurate information being disclosed to other institutions or bodies.
9. Please note that section 12 of the *Privacy Act* applies to customs information. Section 107 of the *Customs Act* governs the use and disclosure of customs information but only replaces section 8 of the *Privacy Act*. Section 107 of the *Customs Act* **does not** replace section 12 of the *Privacy Act*, therefore the **right of access** and the **correction and notification** requirements under section 12 remain applicable to customs information. Also note that the *Customs Act* has expanded the definition of a "person" to include corporations and other bodies beyond just a single individual.

EXAMPLES

10. An individual requests their CBSA file in a formal ATIP request and, after being provided with the information, is upset that they did not receive any information about an incident they were involved in at a specific Port of Entry (POE). In this case, the individual's request was not sufficiently detailed, as their request did not mention or reference their desire to have any information about the incident at the specific POE – it is not reasonable to assume that the ATIP office employee would know to ask that specific POE for any information regarding the individual.
11. A permanent resident requests their CBSA file after experiencing difficulties during the last few times that they returned to Canada. After receiving their file, they realize that the CBSA has mistakenly linked them to a fraudulent visa used in an attempt to board a flight to Canada from overseas. The individual has proof that they were in Canada at the time of the incident and believes that they were the victim of identity theft. The individual contacts the CBSA to have the fraudulent visa incident removed from their file, and includes the proof that they were in Canada at the time of the incident. The CBSA must either make the correction or note on the file that the individual has requested a correction but that the CBSA did not find it valid.



APPENDIX D

LEGISLATION

Section 8 of the *Privacy Act*

Disclosure of personal information

8. (1) Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be disclosed by the institution except in accordance with this section.

Where personal information may be disclosed

(2) Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed

- (a) for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose;
- (b) for any purpose in accordance with any Act of Parliament or any regulation made thereunder that authorizes its disclosure;
- (c) for the purpose of complying with a subpoena or warrant issued or order made by a court, person or body with jurisdiction to compel the production of information or for the purpose of complying with rules of court relating to the production of information;
- (d) to the Attorney General of Canada for use in legal proceedings involving the Crown in right of Canada or the Government of Canada;
- (e) to an investigative body specified in the regulations, on the written request of the body, for the purpose of enforcing any law of Canada or a province or carrying out a lawful investigation, if the request specifies the purpose and describes the information to be disclosed;
- (f) under an agreement or arrangement between the Government of Canada or an institution thereof and the government of a province, the council of the Westbank First Nation, the council of a participating First Nation — as defined in subsection 2(1) of the First Nations Jurisdiction over Education in British Columbia Act —, the government of a foreign state, an international organization of states or an international organization established by the governments of states, or any institution of any such government or organization, for the purpose of administering or enforcing any law or carrying out a lawful investigation;
- (g) to a member of Parliament for the purpose of assisting the individual to whom the information relates in resolving a problem;
- (h) to officers or employees of the institution for internal audit purposes, or to the office of the Comptroller General or any other person or body specified in the regulations for audit purposes;
- (i) to the Library and Archives of Canada for archival purposes;



APPENDIX D (cont'd)

LEGISLATION

Section 8 of the *Privacy Act*

- (j) to any person or body for research or statistical purposes if the head of the government institution
 - (i) is satisfied that the purpose for which the information is disclosed cannot reasonably be accomplished unless the information is provided in a form that would identify the individual to whom it relates, and
 - (ii) obtains from the person or body a written undertaking that no subsequent disclosure of the information will be made in a form that could reasonably be expected to identify the individual to whom it relates;
- (k) to any aboriginal government, association of aboriginal people, Indian band, government institution or part thereof, or to any person acting on behalf of such government, association, band, institution or part thereof, for the purpose of researching or validating the claims, disputes or grievances of any of the aboriginal peoples of Canada;
- (l) to any government institution for the purpose of locating an individual in order to collect a debt owing to Her Majesty in right of Canada by that individual or make a payment owing to that individual by Her Majesty in right of Canada; and
- (m) for any purpose where, in the opinion of the head of the institution,
 - (i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure, or
 - (ii) disclosure would clearly benefit the individual to whom the information relates.

Personal information disclosed by Library and Archives of Canada

- (3) Subject to any other Act of Parliament, personal information under the custody or control of the Library and Archives of Canada that has been transferred there by a government institution for historical or archival purposes may be disclosed in accordance with the regulations to any person or body for research or statistical purposes.

Copies of requests under paragraph (2)(e) to be retained

- (4) The head of a government institution shall retain a copy of every request received by the government institution under paragraph (2)(e) for such period of time as may be prescribed by regulation, shall keep a record of any information disclosed pursuant to the request for such period of time as may be prescribed by regulation and shall, on the request of the Privacy Commissioner, make those copies and records available to the Privacy Commissioner.



Notice of disclosure under paragraph (2)(m)

(5) The head of a government institution shall notify the Privacy Commissioner in writing of any disclosure of personal information under paragraph (2)(m) prior to the disclosure where reasonably practicable or in any other case forthwith on the disclosure, and the Privacy Commissioner may, if the Commissioner deems it appropriate, notify the individual to whom the information relates of the disclosure.

Definition of "Indian band"

(6) In paragraph (2)(k), "Indian band" means

- (a) a band, as defined in the Indian Act;
- (b) a band, as defined in the Cree-Naskapi (of Quebec) Act, chapter 18 of the Statutes of Canada, 1984;
- (c) the Band, as defined in the Sechelt Indian Band Self-Government Act, chapter 27 of the Statutes of Canada, 1986; or
- (d) a first nation named in Schedule II to the Yukon First Nations Self-Government Act.

Definition of "aboriginal government"

(7) The expression "aboriginal government" in paragraph (2)(k) means

- (a) Nisga'a Government, as defined in the Nisga'a Final Agreement given effect by the Nisga'a Final Agreement Act;
- (b) the council of the Westbank First Nation;
- (c) the Tlicho Government, as defined in section 2 of the Tlicho Land Claims and Self-Government Act;
- (d) the Nunatsiavut Government, as defined in section 2 of the Labrador Inuit Land Claims Agreement Act;
- (e) the council of a participating First Nation as defined in subsection 2(1) of the First Nations Jurisdiction over Education in British Columbia Act;
- (f) the Tsawwassen Government, as defined in subsection 2(2) of the Tsawwassen First Nation Final Agreement Act; or
- (g) a Maanulth Government, within the meaning of subsection 2(2) of the Maanulth First Nations Final Agreement Act.

Definition of "council of the Westbank First Nation"

(8) The expression "council of the Westbank First Nation" in paragraphs (2)(f) and (7)(b) means the council, as defined in the Westbank First Nation Self-Government Agreement given effect by the Westbank First Nation Self-Government Act.



APPENDIX E

Links to Legislation

[Access to Information Act](#)

[Agriculture and Agri-Food Administrative Monetary Penalties Act](#)

[Canada Agricultural Products Act](#)

[Canada Border Services Agency Act](#)

[Canadian Charter of Rights and Freedoms](#)

[Canadian Food Inspection Agency Act](#)

[Consumer Packaging and Labelling Act](#)

[Customs Act](#)

[Customs Tariff](#)

[Feeds Act](#)

[Fertilizers Act](#)

[Fish Inspection Act](#)

[Food and Drugs Act](#)

[Health of Animals Act](#)

[Immigration and Refugee Protection Act](#)

[Income Tax Act](#)

[Meat Inspection Act](#)

[Plant Breeders' Rights Act](#)

[Plant Protection Act](#)

[Privacy Act](#)

[Proceeds of Crime \(Money Laundering\) and Terrorist Financing Act](#)

[Security of Canada Information Sharing Act](#)

[Seeds Act](#)

[Special Import Measures Act](#)

CBSA ENFORCEMENT MANUAL

Part 7

ENFORCEMENT SYSTEMS INFORMATION AND INTELLIGENCE

Chapter 4

INTELLIGENCE MANAGEMENT SYSTEM (IMS) BEST PRACTICES

22/01/15

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POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to capture intelligence information in the Intelligence Management System (IMS). IMS is an online case management system used by intelligence personnel, and select other users, on a need to know basis, to research, maintain and update intelligence and related non-criminal investigative information. IMS includes the Occurrence Reporting System (ORS) used by Border Services Officers (BSOs).

DEFINITIONS

2. Refer to Part 11 - Glossary.

AUTHORITIES

3. *Privacy Act*
4. *Access to Information Act*
5. *Customs Act*

PURPOSE AND SCOPE

6. These guidelines are meant to provide best practices while supplementing existing IMS manuals and training products. This document is a standalone document, not an operational training product.
7. These guidelines are not designed to teach how to use IMS (including ORS) - rather, the goal is to promote consistency by all users in order to improve results. As such, this document will continue to be amended as required to address additional issues as they are identified.

BACKGROUND

8. As part of the CBSA Five-Year Evaluation Plan (2013-2018), an evaluation was done of the CBSA's Intelligence Program. The evaluation of the Intelligence Program found that IMS, including ORS, is inconsistently used. ORS is used by BSOs to create occurrence reports, providing information to intelligence staff.

9. As a result of this inconsistent use, intelligence staff are impacted in their ability to provide intelligence that is timely and actionable, to maximise the benefit of information provided by BSOs, and to review and monitor enforcement results.
10. To identify the specific issues surrounding IMS, a survey was created by the Enforcement and Intelligence Program Management Division, Enforcement and Intelligence Programs Directorate, Programs Branch in consultation with the Intelligence Operations and Analysis Division. All regions responded and the results were compiled by the Intelligence Program Unit.
11. The survey results conclude that while IMS is a useful tool, a variety of issues were reported. These issues can be classified as system issues, operational issues and policy issues. System issues require changes to IMS that are not feasible at this time. Operational and policy issues can be resolved with these best practices and upcoming online learning products.

ISSUES

Lack of standardized training and procedures

12. Up to this point, regions have been responsible for their own training. To address this issue, an online IMS training product is being piloted for full implementation. Such training will contribute to a nationally consistent usage of IMS among users.

Inconsistent data entry

13. Not entering data the same way in all regions has resulted in duplicate entries and poor search results. Nomenclature guidelines are provided below to ensure data is entered in a standard format.

Insufficient data input

14. Some users reported limited amounts of data being entered. While labour intensive, adding as much data as possible will contribute to better search results and prevent duplication of entries. Continue to encourage ORS and IMS users to add as many details as possible.

Insufficient feedback

15. The Intelligence Program Evaluation identified a need for continued feedback between front line officers (BSOs) and intelligence staff. Positive outreach from intelligence staff encourages high quality, detailed occurrence reports. Additionally, providing feedback to the originating officer is

beneficial to maintaining a good working relationship. Following up through IMS via the Feedback tab or by email helps to close the loop between BSOs and intelligence staff.

Inappropriate file restrictions

16. Survey results indicated that when files were inappropriately restricted, there was a gap in knowledge sharing, leading to a duplication of effort. File restrictions are necessary but require consistent use. To address this issue, file restriction guidelines have been developed and provided below.

Improperly categorized items

17. Survey results indicate that when a new item is created, most users follow the same line of thought to decide between an occurrence, a case or a project. However, some discrepancies exist. To provide clarity and ensure proper categorization by all users, item creation guidelines are outlined below.

NOMENCLATURE GUIDELINES

Names

18. Names should be entered in the order of Last name, First name. In case of common misspellings, phonetic variations and transcription errors, include known aliases and alternate names as well.

Addresses

19. Addresses should be written in full (building number, street name, and Street/Avenue/Boulevard/Road, etc.). Do not use abbreviations.

Telephone numbers

20. Separate boxes are provided for country code, area code and number-telephone numbers should be entered in their respective, separate boxes. Cell phones should be identified as such to differentiate them from land lines.

Dates

21. Dates should be entered as YYYY-MM-DD.

FEEDBACK GUIDELINES

22. An important step in the intelligence cycle is providing feedback to the originator of an IMS activity. Field Occurrences are submitted by BSOs to the IMS Inbox. In the Activity view of the Field Occurrence Report is an option to provide comments to frontline officers. Giving feedback when possible encourages a positive relationship.

FILE RESTRICTION GUIDELINES

23. Files that deal with sensitive information (confidential sources, “need to know”, third party information, likelihood of a controlled delivery, conflict of interest within CBSA, etc.) may be restricted (“designated” to certain levels) with management approval.

ITEM CREATION GUIDELINES

24. What is the difference between an occurrence, a case and a project? The IMS User Guide (October 2005) offers the following definitions:
 - a) Occurrence: An occurrence is a one-time incident that relates to a known or suspected illegal cross-border activity. Occurrences can be assigned a name.
 - b) Case: A case is a means to capture and manage raw information and facts on entities, events, and documents, to link identified entities and to provide administrative functions. It provides more functions than an occurrence.
 - c) Project: A project has the same functions as a case except that it usually involves several individuals and/or agencies. Projects can be assigned a name.
25. A new item should be created using these definitions as guidelines. As such, cases will be created in most situations (those requiring further investigation and/or work). Occurrences are useful for logging one-time events for future reference. Projects should be opened for larger scale operations, or in order to link multiple cases together. Joint Forces Operations should be opened as projects.
26. As a rule of thumb, items should be created according to the IMS User Guide definitions.

ROLES AND RESPONSIBILITIES

Border Services Officers

27. Border Services Officers are responsible for providing Occurrence Reports relating to incidents/occurrences involving, or suspected of involving, illegal cross border activity.

Intelligence Staff

28. Intelligence staff are responsible for reviewing, validating and actioning Occurrence Reports, providing feedback to Border Services Officers, and creating and maintaining lookouts.

PROCEDURES

29. Please refer to the resource directory page for Intelligence Management System / Occurrence Reporting System on Atlas.

REFERENCES

30. Resource directory page for Intelligence Management System / Occurrence Reporting System on Atlas

CUSTOMS ENFORCEMENT MANUAL

Part 7

CUSTOMS ENFORCEMENT SYSTEMS, INFORMATION AND INTELLIGENCE

Chapter 7

INTEGRATED PRIMARY INSPECTION LINE, SECONDARY PROCESSING AND PASSAGE HISTORY

15/05/06

POLICY STATEMENT

1. It is the policy of the Customs Border Services Agency (CBSA) to use the Integration Primary Inspection Line (IPIL) and the Secondary Processing (SP) and Integrated Customs Systems (ICS) Passage History (PH) systems to help identify high-risk travellers.

DEFINITIONS

2. Refer to Part 11, Glossary.

AUTHORITIES

Privacy Act

3. Section 4 – Limits the collection of personal information to that directly related to an operating program or activity of an institution.
4. Section 6 – Requires a retention period for personal information collected.

Note: Regulations for customs purposes require at least a two-year retention period.
5. Section 7 – Limits the use of information to the purposes for which it was collected.
6. Section 8 – Limits the disclosure of information but provides for disclosure to an investigative body.

Customs Act

7. Section 107 – Allows for the provision to others, access to others, and use of customs information that is gathered in the administration or enforcement of the *Customs Act* or the *Customs Tariff* or is prepared from such information.
8. Section 160 – States that unauthorized disclosure of customs information is a punishable offence.

PURPOSE AND SCOPE

9. The purpose of this policy is to provide guidelines for the use and maintenance of IPIL, the Secondary Processing and ICS Passage History. The policy applies to all CBSA employees whose position requires them to use IPIL, Secondary Processing, ICS Passage History or information from both the Integrated Customs Enforcement System (ICES) and the Field Operations Support System (FOSS) databases.

BACKGROUND

10. The Integrated Primary Inspection Line (IPIL) system is an automated support tool used to process the passage of travellers into Canada. IPIL aids officers who are working at the Primary Inspection Line (PIL) in reaching the decision to either release or refer a person seeking entry to Canada. Passage processing includes the ability to query travellers against both customs and immigration lookout databases by either using a document reader or by manually keying tombstone information of the traveller. IPIL provides officers with an immediate system response.
11. IPIL was implemented in August 2000 at both Vancouver and Toronto International Airports. It has since been expanded to all major airports and bus lanes, as well as select commercial highway, rail, ferry and cruise ship locations. Officers within the CBSA use the IPIL system as part of the screening process for international travellers and their goods. IPIL is the primary agency tool for the processing of international travellers arriving into Canada at 48 locations as of August 2005. It searches the criteria against ICES and FOSS databases for potential matches.
12. Secondary Processing and ICS Passage History initiatives fall under the *Customs Action Plan*, and involve automating the collection of customs and immigration results for travellers referred from primary for secondary processing, and to provide designated users a single consolidated view of all previous traveller passages.
13. Secondary Processing allows for the capture of secondary examination results and "closes the loop" by linking referrals and lookouts with interceptions and enforcement actions. The secondary processing functionality is deployed at all major airports and bus locations, as well as select ferry, cruise ship, rail and commercial highway locations across Canada where IPIL and/or CANPASS-Air have been implemented. In the past, when there was a referral from primary to secondary we knew this occurred but we did not capture secondary examination details. With the implementation of secondary processing, all the referrals are stored in the ICS Passage History database.

14. Where there is a referral to any secondary area at an IPIL enabled site, the referral information from PIL populates the secondary officer's screen to expedite the process. Any disposition results are recorded and stored in ICS Passage History (PH) database. These results are then available for viewing within the Passage History component, and provides designated CBSA personnel with a single consolidated view of previous traveller passages through various modes of travel as captured in CBSA automated systems.
15. Also, with the click of one button, the secondary officer is able to access a traveller's passage history, from secondary (6yrs.+current). This allows the officer a view of:
 - a) previous passages;
 - b) referrals and results, if any; and
 - c) aliases attached to any of these referrals
16. Both IPIL and Secondary Processing and ICS Passage History reside within the Integrated Customs Systems (ICS). ICS ensures that all new Customs systems are developed within a single, component based architecture framework. It provides the framework for future customs information technology initiatives and allows for a planned and incremental approach to building and integrating the majority of customs traveller and trade automated applications. The following link contains more information regarding ICS:

<http://infozone/english/r3510200/mpdd/SDDI/ics.html>

POLICY GUIDELINES

17. IPIL is a comprehensive windows-based software application designed to provide a single interface for the querying of the travellers information, and search for previous enforcement actions, lookouts and immigration offences. Using the CBSA's data communication network (RC7.5), IPIL has the capability to record passage history, store and distribute reports on all of the queried information.
18. The Secondary Processing (SP) and ICS Passage History (PH) component provides the ability to process and acquit all referrals from PIL and the CANPASS kiosk. This information will be captured within ICS Passage History.

19. The IPIL System is an automated query application that searches the following databases displaying name, date of birth, enforcement action type, commodity and / or caution:
 - a) Integrated Customs Enforcement System (ICES); and
 - b) Field Operations Support System (FOSS) – enforcement.
20. The ICES database includes individuals who have committed infractions against the *Customs Act*, *Excise Act*, the *Export/Import Permits Act* and Agriculture Canada. It also includes lookouts developed by intelligence sources, which may include potential violators of the *Customs Act*, the *Controlled Drugs and Substances Act*, the *Food and Drugs Act* and other legislation, enforced by the CBSA.
21. The FOSS enforcement database includes previous and pending deportations, overextended stays by visitors, individuals who fail to present themselves for Immigration hearings or voluntary departures, warrants issued by Immigration, Interpol information on suspected and known terrorists, intelligence lookouts and individuals refused entry at ports of entry. If IPIL does not receive a response from the real-time connection to the FOSS database within 1.8 seconds, the immigration query will revert to a backup copy, which is up to or less than 72 hours old, on the ICES database.
22. The Previous Offender Sub-System, within ICES, is linked to IPIL and helps select high-risk travellers for possible examination. Random selection for referral is generated by the system.
23. There are 4 main components that support IPIL functionality: IPIL - PIL Query, IPIL Usage and Audit Reports, ICS Port Parameters and Air Passage History:
 - a) IPIL - PIL Query is used by the primary officer to process travellers. IPIL provides the ability at the primary line to query traveller names and documentation against the ICES and FOSS databases. The interface provides real time information and is seamless to the user. The officer enters the traveller tombstone information by scanning the passport or other travel document using the passport reader, or manually entering and sending the information to search the ICES and FOSS – enforcement databases. The user receives the top three matches in the ICES database, the top five matches in the FOSS database and a lost/stolen/fraudulent document indicator if applicable. For all returned system hits, the officer evaluates the potential matches to determine if the traveller they are processing has a previous infraction or outstanding lookout.

- b) IPIL Usage and Audit Reports is a reports facility. It provides the ability to generate a series of management reports essential to the IPIL operation. Only certain profiles have access to this function. The reports may be assembled according to a series of user-selectable criteria. They may then be viewed on-screen and printed. This information will be used in monitoring operational enforcement program requirements.
- c) ICS Port Parameters is a common component to IPIL, Secondary Processing and ICS Passage History, CANPASS Air and Nexus Highway. Using this component, users with the appropriate profile can create Hot Messages that are viewed on the IPIL screen, as well as modify the IPIL Random Referral Rate.
- d) Air Passage History is a component within the ICES reporting facility that allows the user to produce a Traveller History Report for many different types of criteria. All queries performed in IPIL are written to the Air Passage History database that resides in ICES. This information is very useful for targeting units to determine trends and patterns on targeted individuals such as drug runners and terrorists and for investigations that require knowledge of an individual's prior entries into Canada.

SECONDARY PROCESSING AND ICS PASSAGE HISTORY

24. Internet explorer must be available on all terminals running ICS.

- a) Using this component, users with the appropriate profile can set 1st and 2nd thresholds within Secondary Processing.
- b) The 1st and 2nd thresholds are used to process un-acquitted referrals from the Secondary Referral List (SRL).
- c) The 1st threshold, set at the port by the Superintendent, is indicated on the SRL by bolding any unassigned referral(s) with the hour set when it reaches the 1st level. This means that the referral has not been processed in the secondary area by the time set at the port.
- d) When the 2nd threshold has been reached (the time set at the port has been reached), the system automatically closes the referral as un-acquitted, with the exception of exact matches and referrals that are un-assigned.

ROLES AND RESPONSIBILITIES

CBSA Officers

25. CBSA officers are responsible for using the IPIL system in accordance with these guidelines.

CBSA superintendents

26. Superintendents are responsible for ensuring that the policies and procedures relative to the site operation and use of IPIL in their region are adhered to;

Enforcement Branch

27. The Enforcement Branch is responsible for:
- a) developing, modifying, and approving all policies related to the use of IPIL, user access, its data banks, files and records, and outside system interfaces;
 - b) approving additional system functionality and expansion, including expansion of the system outside of CBSA;
 - c) ensuring that processes and policies of other directorates, divisions, agencies, and departments are adhered to in the development, implementation, and operation of IPIL.

PROCEDURES – IPIL and Secondary Processing and ICS Passage History

28. All users must have an active ICS User ID to have access to IPIL. If any modifications are needed to a user's work location or profile, this request should be directed to the Regional Security Officer and/or Superintendent for action. Password resets should be directed to the local IT Helpdesk or Regional Security Officer during regular business hours, and after hours requests should be directed to the National Helpdesk.

Note: Access to the functions of IPIL, Secondary Processing and ICS Passage History are controlled by the ICS user profile. User profiles restrict access to specific functions and are based on users' work positions.

29. Under no circumstances will users share their password or User ID with other individuals.

30. IPIL, Secondary Processing and ICS Passage History users are responsible for all transactions completed using their User ID and password. IPIL has the ability to audit all transactions and show the relationship between the user, the terminal and data. The owner of the User ID is liable for any misuse or compromise of the system and data contained in the databases. Audit records are monitored regularly.
31. Users must query each and every traveller who presents a machine-readable document.
32. 100% of travellers must be queried. Travellers whose travel documents are not machine readable must be queried through manual data entry.
33. All queries that are keyed by manual entry must include surname, first name, middle name (if applicable) and a date of birth.
34. IPIL queries are to be made only at the Primary Inspection Line and only for the purpose of clearing travellers who are physically present.
35. PIL Query should only be accessed from Secondary when a passage does not exist for a traveller.
36. All PIL queries initiated from the Secondary area must be keyed by manual entry. These queries MUST include surname, first name, middle name (if applicable) and a date of birth. Before doing so, CBSA officers must ensure that there is no previous passage for the referral.
37. In situations where IPIL becomes unavailable (i.e. during a system outage) the user will make a reasonable attempt to obtain any information deemed necessary to conduct a proper risk assessment on a traveller at the time of passage. This may be done through verbal questioning, or by requesting additional documentation from the traveller to ensure that CBSA concerns are met.
38. Test-passports used to ensure proper functioning of document readers are not to be used with the application.
39. These procedures are permanent and are not limited only to periods of high alert.

EN Part 7 Chapter 7

Integrated Primary Inspection Line

40. All Secondary Processing users must process the referral from the Secondary Referral List (SRL).
41. Referrals that remain outstanding on the SRL past the 1st threshold (set at port) should be further investigated and then closed as un-acquitted.
42. Un-acquitted referrals that reach the 2nd threshold will be system auto-closed. This is not the recommended way to acquit referrals and hence subject to an audit report.
43. It is expected that if a customs secondary examination yields results, the action should be recorded through the Secondary Processing Application on the Record Examination Results Screen.
44. **Important! Notes should never be added to any enforcement action. The reason is that if the enforcement action is overturned the note cannot be removed. Anytime you add a note, keep in mind that it cannot be deleted or removed.**
45. For IPIL user support please e-mail IPIL-SIGLIP@cbsa-asfc.gc.ca or contact an officer at (613) 941-4153 or (613) 948-7136.
46. To report technical problems with the IPIL system, please contact the local IT Services unit first, or if unavailable the National Help Desk at (613) 954-4086.

REFERENCES

47. *Customs Act*
Privacy Act

CBSA ENFORCEMENT MANUAL

Part 8

DOCUMENTATION AND REPORTS

Chapter 1

NOTEBOOKS

2008-04-07

1. It is the policy of the Canada Border Services Agency (CBSA) that officers are to document the activities they perform while on duty, including all occurrences, incidents and enforcement actions, in the Officer Notebook.

DEFINITIONS

2. Refer to Part 11 Glossary

AUTHORITIES

Customs Act

3. Section 11 – Obliges every person seeking entry into Canada to present themselves to an officer and to answer truthfully questions asked by an officer in the performance of his or her duties under the *Customs Act* or any other Act of Parliament for which the officer has administrative responsibility.
4. Section 12 – Requires persons and importers to make a report of all goods they are importing.
5. Section 13 – Obliges persons and importers to make a truthful declaration, answer questions truthfully, and present their goods for examination.

PURPOSE AND SCOPE

6. The purpose of this policy is to provide guidelines to CBSA officers on the use of the Officer Notebook, form BSF556.

POLICY GUIDELINES

7. CBSA officers are often involved in legal proceedings, which may require appearances in court. The success of such appearances may depend heavily upon the officer's ability to recount the circumstances immediately before, during and after an occurrence, incident or enforcement action. The notebook is an important enforcement tool used for recording and recollecting such information.
8. In criminally prosecuted matters, the Crown Counsel must be provided with a copy of the handwritten notes of any officer involved in this matter, whether that officer is to be called as a witness or not. The officers involved may be asked to provide the investigating officer with a signed copy of the notes taken in regards to the issue.
9. When an officer refers to a notebook in court, the notebook may be introduced as an exhibit and may be examined by the defence attorney.

The defence attorney will examine the officer's notes to identify material that could be used to weaken or discredit the testimony or credibility.

10. In addition to scrutiny by Officers of the Court, access to an officer's notebook or portions of the notebook may be granted through provisions of the *Privacy Act*.
11. Under the provisions of the *Privacy Act*, an individual is able to make a request to the *Privacy Act* Coordinator to gain access to that portion of an officer's notebook that relates directly to him or her. Depending on the information contained in the officer's notes, the CBSA *Privacy Act* Coordinator may grant the request, refuse the request or grant the request with sensitive information deleted.
12. The notebook has been developed by the CBSA. It is produced in a form acceptable to the courts by being individually numbered, stitch bound and having the pages numbered sequentially from 1 to 100.
13. The first page contains spaces for the CBSA officer's name, badge number, location, date of the first entry and date of last entry. The second and third pages contain the phonetic alphabet and 10 codes for use when communicating by radio. Pages for commonly used telephone numbers and tariff items have also been included. Each numbered page is lined and has a margin on the left side for the notation of the date and time the entries are made.
14. The notebook contains sensitive information and must be accorded the same security as other protected materials. Wherever possible, completed notebooks should be secured on CBSA premises.
15. The notebook is considered to be property of the Crown and must be returned prior to leaving the CBSA.
16. The notebook is an official CBSA document and may be entered as evidence during court proceedings. Because of this, the information entered into the notebook must relate solely to the officer's duties.
17. The notebook is to contain the details of the officer's personal knowledge of the events occurring immediately before, during, and after the enforcement action, that could be presented during court processes. Generally, there are no objections raised to an officer refreshing his or her memory from their notes, which were made at the time of the occurrence. However, the use of the notebook in court is a privilege that must be granted by the judge or justice.

ROLES AND RESPONSIBILITIES

CBSA Officers

18. CBSA officers are responsible for:

- a) documenting the activities they perform on duty, including occurrences, incidents and enforcement actions, in their notebook;
- b) storing their notebooks in a secure location; and
- c) turning in their notebooks when they leave the CBSA.

CBSA Supervisors

19. CBSA supervisors and superintendents are responsible for:

- a) documenting the activities they perform on duty including, occurrences, incidents and enforcement actions, in their notebook;
- b) storing their notebooks in a secure location;
- c) turning in their notebooks when they leave the CBSA; and
- d) conducting periodic reviews of officers' notebooks.

CBSA Managers/Chiefs

20. CBSA Managers/Chiefs are responsible for:

- a) providing a secure location for the storage of CBSA notebooks and related records;
- b) retrieving all notebooks from a CBSA member when that member leaves the CBSA.
- c) retaining CBSA notebooks and related records as per CBSA policy; and
- d) ensuring compliance with this policy and procedure.

PROCEDURES

21. Complete the first page of the notebook (i.e. name, badge number, location, date of the first entry and date of last entry). All spaces except date of last entry must be filled out upon issue.
22. Document only the information that relates to the CBSA duties.
23. All entries in the notebook must be made in ink.

Note: If a pen runs out of ink during note taking, record the reason for changing pens to explain why different inks were used in the notebook.
24. At the beginning of every shift, record the date and time in the left hand margin of a new page. The officer's work location and the weather conditions or temperature of the building may also be recorded at the beginning of every shift and when they change.
25. The date may be recorded in full (e.g. January 15, 2005) or with numbers (e.g. 05/01/15). When using numbers use the year/month/day format. .
26. Use the 24-hour clock to record the time (e.g. 1425) and state whether the time is exact or approximate.
27. Notes should be made on the front of the page. Draw an "X" or "Z" through the back of each page and initial it. Use the same symbol ("X" or "Z") consistently through the whole book.
28. Do not leave any lines blank. Draw a line through any unused portion of a page.
29. Do not erase or obliterate any entries.
30. Do not remove pages from the notebook. If an incorrect notation is made, draw a line through the error and initial the correction.
31. Make the note/entry at the time the information is gathered or as soon as operationally possible after the occurrence.
32. If there is a delay in making notes, the reasons for the delay should be included in the entry. Delays can seriously affect the accuracy of the information in the notebook and its admissibility in court.
33. If unforeseen circumstances require that notes be recorded on separate pieces of paper, rather than in a notebook, these notes are to be copied into the officer's notebook as soon as possible, ensuring that:

- a) a notation is made identifying that these notes originate from another document; and
 - b) the original notes are retained for full disclosure.
34. If information is recalled after the fact, additional entries may be added to the notebook. They are not to be included with the original entry, but a new entry is to be made. The new entry should include recalled facts, and start with a reference to the incident being referred to such as "In reference to an occurrence that took place at... (insert the work location, time, date and page numbers of the original entry)... I recalled the following additional information".
35. All entries must be legible and clearly written. If an officer's handwriting is difficult to read, they are to print their notes.
36. Do not use shorthand or abbreviations known only to yourself. If you wish to use abbreviations, maintain a list of them and keep it in your notebook. You will need to make it available to court representative or other persons who may be required to read and understand the notes.
37. To establish continuity and the timeliness of actions taken, indicate in your notes:
- a) time/date action (i.e., arrest, seizure, detention) commenced and was completed;
 - b) time/date reason, cautions and rights under the *Canadian Charter of Rights and Freedoms* were given and the person's response to them;
 - c) time counsel was called/contacted;
 - d) time the assisting officer arrived; and
 - e) time the police, investigator, etc, was notified, and/or arrived, and/or took control of the exhibits and person.
38. Clearly identify the persons interviewed, examined, detained or arrested. Always note the complete name, not initials. Names must be printed clearly and it is preferable to show the family name in capital letters.
39. When documents are taken as proof of identity/ownership, record the type of identification and the document number in your notes. (i.e. Canadian passport, passport number, Ontario drivers licence, drivers licence number)

40. Include all pertinent information relating to the actions undertaken, such as:
 - a) persons interviewed;
 - b) persons associated with the individual;
 - c) officers assisting in the interview or examination and what activities they undertook;
 - d) officers indirectly involved in the action, (e.g. primary officer or the point officer);
 - e) the owner of the conveyance, company, shipment, etc; and
 - f) the name, rank and agency of the person to whom the evidence, exhibits and persons were turned over;
41. Fully describe the individual with information that includes:
 - a) date of birth and place of birth;
 - b) address of the person;
 - c) physical appearance, (i.e. height, weight, build, tattoos or other distinguishing marks or characteristics); and
 - d) how the individual was dressed;

Note: when making an entry with respect to the individual's dress, officers may include observations of inconsistency or conflict with statements made on employment, resident, destination, and purpose of travel, etc.

 - e) whether the individual was cooperative;
 - f) statements made by a person, an associate or a witness, whether inculpatory or exculpatory; and
 - g) observed mannerisms, behaviour, attitude and actions of the individuals.
42. Document goods discovered during an examination or personal search, including physical description of the goods, where they were found or concealed, how they were packaged, quantity, weight, size, etc.

Note: If possible officers should take photographs of goods discovered during an examination or personal search. The taking of photographs is to be included in the officer's notes (e.g. 2345 picture No 1 of body pack located on left thigh taken, etc. – picture dated, timed and initialled, etc.).

43. Ensure that notes include the indicators that provided reasonable grounds to support the referral, examination or search. Record the names of the officers who handled the evidence, the tools or equipment used to complete the examination, any tests conducted and the results of any tests (i.e. suspected – heroin). Record the name of the officer who took control of the evidence, the documentation used to transfer exhibits/evidence and where and how the goods were stored for exhibit purposes.
44. Officers may draw sketches in their notebooks if it will make their notes more complete or understandable.
45. When a supervisor reviews an officer's notebook, the supervisor is to date and initial the notebook.
46. Secure completed notebooks on CBSA premises (e.g. employee's locker or a central file room).
47. Turn over all completed or partially completed notebooks to the Manager or Chief at the end of your employment with the CBSA. This applies to all officers (i.e. indeterminate, summer casual and part-time officers).
48. Prior to attending court, isolate relevant notes in the notebook by using elastic bands or paper clips. This will ensure that the defence attorney does not examine the full contents of the notebook and gain access to information that is not relevant to the case.
49. Officer wishing to refer to their notes in court must seek permission from the court. Request permission by asking the judge the following question:

"Your honour, may I refresh my memory from notes which were made by me at the time of the seizure/investigation/occurrence?"
50. Before giving evidence that may be considered by some persons to be obscene or inappropriate (i.e. statements made by the accused or a witness) ask for the judge's permission. If the judge directs you to present it, do so, without hesitation. The judge may however, direct you to write out the evidence for the court instead of repeating it aloud.
51. If requests are received from an individual for access to notebook information, advise the person to complete an application to the Access to Information Program.

REFERENCES

Customs Act
Canadian Charter of Rights and Freedoms

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Enforcement Forms

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to use nationally accepted forms in established processes and procedures.

DEFINITIONS

2. Refer to Part 11, Glossary.

PURPOSE AND SCOPE

3. The purpose of this policy is to inform CBSA officers of existing forms and their uses.

POLICY GUIDELINES

4. Officers will use the designated CBSA forms described herein in the performance of their enforcement duties.
5. Enforcement forms will be available on the intranet in pdf fillable format whenever possible.
[Enforcement Forms](#)
6. Hard copies of forms will be available at the following warehouses unless otherwise specified:
 - a) (Prairie and Pacific regions)
Western Distribution Centre
Winnipeg Warehouse
201 Weston Road.
Winnipeg, Manitoba
R3H 3H4
 - b) (Northern Ontario, Southern Ontario, Quebec and Atlantic regions)
Eastern Distribution Centre
Mississauga Warehouse
5700 Keaton Crescent
Mississauga, Ontario
L5R 3H5

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APPENDIX A

AUTHORITY CARDS

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APPENDIX A Authority Cards

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to issue authority cards to officers that have been delegated the authority of the President to enforce parts of the *Customs Act* and the *Immigration and Refugee Protection Act (IRPA)*.

PURPOSE

2. The purpose of this policy is to provide guidelines for the issuance of the authority cards. These cards identify officers who have been granted authorities of the President for the purposes of administering (or enforcing) parts of the *Customs Act* and the *Immigration and Refugee Protection Act (IRPA)*.

BACKGROUND

3. Certain CBSA officers hold cards, which identify them as employees responsible for specialized functions.
4. The authority card is an operational requirement. The card is used when entering premises to inspect records for the purposes of enforcing the *Customs Act* and the *Immigration and Refugee Protection Act (IRPA)*. It is also used when appearing in support of a court case related to that activity. It is used to gain public trust and to facilitate their jobs in gaining access to facilities to conduct searches.

POLICY GUIDELINES

5. Intelligence, investigations, compliance verification, hearings and the inland enforcement officers, have authority cards which identify them as CBSA employees who have been delegated special authorities by the President of the CBSA (for example, the right to enter a premises to examine books and records).
6. The sections of the *Customs Act* and the *Immigration and Refugee Protection Act*, as well as the job titles of officers with the delegated authority to administer (or enforce) those sections are on the intranet at: [Delegations and Designations](#)
7. Student officers will not be entitled to authority cards.

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8. No officer may retain authorization cards from their former organization (e.g. Citizenship and Immigration Canada or Canada Customs and Revenue Agency). The cards must be handed in to the regional security office for destruction upon receipt of the CBSA authority card.

Please refer to the following link for a list of regional security contacts:
[Security Contacts](#)

9. Officers will retain their authorization card when they:
 - a) transfer between offices or regions;
 - b) accept a secondment or temporary assignment to an area not requiring authorization; or,
 - c) are temporarily incapacitated for medical reasons or any other reason approved by regional management.
10. Officers will surrender their card when they accept a permanent assignment to an area within the CBSA that is not a qualifying position or leave the employment of the CBSA.
11. It is not an obligation to have an authority card. The functional program areas will identify the qualifying positions. Consideration is given to the operational requirements for the issuance of a card based on the duties being performed.
12. It is not necessary to have a badge to obtain an authority card nor is it necessary to have an authority card if you have a badge. The badge numbers will not be included on the cards themselves.
13. Officers occupying qualifying positions are responsible for the completion of the Controlled Asset form (BSF208).
14. The Regional Director General is responsible for signing the Controlled Asset form (BSF208) thereby attesting to the fact that the officer occupies a qualifying position.
15. The regional security officer is responsible for issuing the card upon receipt of the Controlled Asset form (BSF208) and the return of the officer's prior authority card.
16. The front of the card includes a colour photograph or digitized image and the name and surname of the individual, job title, and expiry date (year, month, day) covering a maximum period of five years from the date of issue.

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17. The back of the card reads as follows:

The bearer is an employee of the Canada Border Services Agency and is a peace officer pursuant to the *Criminal Code of Canada* in the performance of his/her duties as an officer under the *Customs Act* and/or the *Immigration and Refugee Protection Act*.

The bearer is authorized by law to administer and enforce certain provisions of the *Customs Act*, the *Immigration and Refugee Protection Act* and/or other program legislation as defined in the *Canada Border Services Agency Act*.

If you find this card, please drop it in any mailbox
Ottawa, Ontario, K1A 0L8

18. The back of the card will also bear a JPG image of the President's signature.
19. The card is printed horizontally, to differentiate them from the current identification cards.

ROLES AND RESPONSIBILITIES

Qualifying Officer

20. A qualifying officer is responsible for:
- a) signing the "Acknowledgement of Receipt of the Authority Card" section of the Controlled Asset form (BSF208) when they receive their authority card and,
 - b) reporting immediately the loss, theft, mutilation or destruction of their card to their immediate supervisor and to HQ/regional security and Rigaud Officials. All appropriate documentation shall be completed, including Form BSF152 *Security Incident Report* according to the security policies established in Chapter 15 of the CBSA Security Manual. Further information on security incident reporting procedures may be found at:
[How to Report Incidents](#)
 - c) following local practices when surrendering their authority card, the officer signs the Acknowledgement of Return portion of the Controlled

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Asset form (BSF208) indicating that the card has been returned when they:

- i. accept a permanent assignment to an area within the CBSA not requiring an authority card;
 - ii. are on extended leave for a period of greater than four (4) months; or,
 - iii. leave the employment of the CBSA.
- d) notifying the local security official of a name change

Director, Program Services

21. The Director, Program Services is responsible for:

- a) monitoring compliance with these policies and procedures;
- b) ensuring that the authorized officers continue to meet the CBSA approved criteria of the job position relating to the authority card;
- c) ensuring that the applicant occupies a qualifying position;
- d) notifying the applicable regional security official to ensure that the control of an officers authority card is transferred when the officer is transferred out of or into their area of responsibility;
- e) ensuring that a former authorized officer who returns to duty, returns to a qualifying position, if the officer has retained an authority card;
- f) notifying the regional security office of regional management decisions to revoke the authorization of an authorized officer in order that a Controlled Asset form (BSF208) may be completed. (e.g. authorized officer leaves the employment of the CBSA);
- g) notifying the regional security office when a former authorized officer returns to the duties of a qualifying position, and, not having retained the card, requires the authority card to meet the operational requirements of the position, at which time the Controlled Asset form (BSF208) may be prepared;
- h) ensuring that documentation required to grant or to revoke the authorization Controlled Asset form (BSF208) is completed and provided to the Regional Director General for signature; and,

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- i) notifying the local security official of a name change.

Regional Director General or Director of Operations

22. The Regional Director General or Director of Operations is responsible for:

- a) ensuring compliance with these policies and procedures;
- b) signing the Controlled Asset form (BSF208) to authorize officers to have an authority card
- c) signing the Controlled Asset form (BSF208) to revoke authorization when an officer is no longer in a job position where an authority card is a requirement; and,
- d) forwarding the signed document for processing by the regional security official.

Regional Security Official

23. A regional security official is responsible for:

- a) issuing and controlling the authority card; including having the authorized officer sign the completed acknowledgement section of the Controlled Asset form (BSF208), when they receive their authority card;
- b) forwarding the original signed copy of the Controlled Asset form (BSF208) to the Corporate Security and Internal Affairs Directorate and retaining a copy for inclusion in each officer's security file;
- c) when advised of an authorized officer's transfer between regions and/or offices; Regional Security must transfer control of the authority card by forwarding a copy of the BSF208 to the new Regional Security office and sending the original completed BSF208 to the Corporate Security and Internal Affairs Directorate; and
- d) maintaining a regional repository of names in a database of who has been issued an authority card.

Corporate Security and Internal Affairs Directorate

24. The Corporate Security and Internal Affairs Directorate is responsible for:

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- a) liaising with the Enforcement Branch on the matters concerning the control and issuance of the authority card;
- b) creating issuance procedures to regional security officials on the issuance and control of the authority card; and,
- c) maintaining a national repository of names in a database of who has been issued the controlled assets.

Headquarters – Enforcement Branch

25. The Headquarters Enforcement Branch is responsible for:

- a) developing and modifying the policy and procedures as required;
- b) providing guidance and support to the field; and,
- c) liaising with Corporate Security and Internal Affairs Directorate on matters concerning the control and issuance of the authority card.

PROCEDURES

26. These procedures are intended to reflect national consistency for the process of providing authority cards to qualifying officers. The purpose of the cards is to meet the operational requirements to enforce various sections of the *Customs Act*, *Customs Tariff*, *Special Import Measures Act*, *Excise Act*, *Excise Act, 2001* and/or the *Immigration and Refugee Protection Act*, acts and regulations.

Authorization Process Procedures and Checklist

<u>Qualifying Officer</u>	
Applying for New Card	Revoking an Existing Card
<ul style="list-style-type: none"> ✓ request an authority card by completing Form BSF208; ✓ sign the Acknowledgement of Receipt portion of BSF208 when they receive card ✓ report any loss, theft or mutilation as a security incident 	<ul style="list-style-type: none"> ✓ surrender the card when they accept a position not requiring an authority card and complete Form BSF208 ✓ surrender the card when they leave employment of CBSA and complete Form BSF208 ✓

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Director, Program Services	
<p>Applying for New Authority Card</p> <ul style="list-style-type: none"> ✓ verify that documentation required to grant the authorization (Controlled Asset form BSF208) is completed; ✓ ensure that the officer occupies a qualifying position; ✓ forward the signed and completed original Controlled Asset form (BSF208) to the Regional Director General for signature. 	<p>Revoking an Existing Authority Card</p> <ul style="list-style-type: none"> ✓ notify the regional security office when a former authorized officer returns to the duties but does not meet the criteria to possess an authority card; ✓ notify the applicable regional security official to ensure that the control of an officers authority card is transferred when the officer is transferred out of or into their area of responsibility; ✓ notify the regional security office of regional management decisions to revoke the authorization of an officer in order that a Controlled Asset form (BSF208) may be completed. (e.g. authorized officer leaves the employment of the CBSA); ✓ ensure that documentation required to revoke the authorization (Controlled Asset form BSF208) is completed; ✓ provide the Controlled Asset form (BSF208) to the Regional Director General or delegated authority for signature;

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<u>Regional Director General or Director of Operations</u>	
<p>Applying for a New Authority Card</p> <ul style="list-style-type: none"> ✓ sign the Controlled Asset form (BSF208) to authorize officers to have an authority card; and, ✓ forward the original to the applicable regional security official, in order for the authority card to be issued to the officer; ✓ 	<p>Revoking an Existing Authority Card</p> <ul style="list-style-type: none"> ✓ sign the Controlled Asset form (BSF208) to revoke authorization when an officer is no longer in a job position where an authority card is a requirement. ✓ forward the signed original of the signed BSF208 to the applicable regional security official; ✓
<u>Regional Security Official</u>	
<p>Application for a New Authority Card</p> <ul style="list-style-type: none"> ✓ issue and control the authority card; including having the authorized officer sign the completed acknowledgement section of the Controlled Asset form (BSF208), when they receive their authority card; ✓ forward the signed original Controlled Asset form (BSF208) to the Corporate Security and Internal Affairs Directorate for inclusion in the officer's security file; and, ✓ retain a certified true copy for inclusion in the officer's security file ✓ when advised of an authorized officer's transfer between regions and/or offices; Regional Security transfer control of the authority card by forwarding a copy of the BSF208 to the new Regional Security office and sending the original completed BSF208 to the Corporate Security and Internal Affairs Directorate 	<p>Revoking an Existing Authority Card</p> <ul style="list-style-type: none"> ✓ take control of the authority card including having the officer sign the Acknowledgement of Return portion of the Controlled Asset form (BSF208) indicating that the card has been returned; ✓ forward the signed original Controlled Asset form (BSF208) to the Corporate Security and Internal Affairs Directorate for inclusion in the officer's security file; ✓ retain a certified true copy for inclusion in the officer's file

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REFERENCES

Customs Act

Immigration and Refugee Protection Act

Customs Tariff

Special Import Measures Act

Excise Act

Excise Act, 2001

Criminal Code

Management Services Manual

Corporate Security and Internal Affairs Directorate Manual

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APPENDIX B

DESIGNATION CARDS

20/08/08

APPENDIX B Designation Cards

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to designate officers for the purposes of administering Part VI.1 of the *Customs Act*: “Enforcement of *Criminal Code* Offences Other Than Offences Under This Act.”
2. An officer must successfully complete Officer Powers (OP) training in order to be designated. It is also the policy of the CBSA that an officer will not be designated unless he/she also successfully completes the Control and Defensive Tactics (CDT) Training. Once the officer has completed both OP training and CDT, should he/she be designated, he/she will receive the Certificate of Designation card.
3. Student officers will not be designated.

DEFINITIONS

4. “Designated Officer” - an officer who is designated by the President pursuant to subsection 163.4 of the *Customs Act*. Subsection 163.5 provides a designated officer with the powers and obligations afforded to peace officers for the purposes of enforcing sections 253, 254, and 495 to 497 of the *Criminal Code*.
5. “Security Official” – individual who has been assigned security responsibilities for the implementation of agency security policies, standards and procedures.
6. Refer to Part 11, Glossary for more definitions.

AUTHORITIES

Customs Act

7. Subsection 163.4(1) - The President may designate any officer for the purposes of this Part and shall furnish the officer with a certificate of designation.
8. Subsection 163.4(2) - A certificate of designation is admissible in evidence as proof of the officer’s designation without proof of the signature or official character of the person appearing to have signed it.

APPENDIX B Designation Cards

9. Subsection 163.5(1) – In addition to the powers conferred on an officer for the enforcement of this Act, a designated officer, who is at a CBSA office and is performing the normal duties of an officer or is acting in accordance with section 99.1 has, in relation to a criminal offence under any other Act of Parliament, the powers and obligations of a peace officer under section 495 to 497 of the *Criminal Code*, and subsections 495(3) and 497(3) of that Act apply to the designated officer as if he or she were a peace officer.
10. Subsection 163.5(2) – A designated officer who is at a CBSA office and is performing the normal duties of an officer or is acting in accordance with section 99.1 has the powers and obligations of a peace officer under sections 254 and 256 of the *Criminal Code* and may, on demanding samples of a person's blood or breath under subsection 254(3) of that Act, require that the person accompany the officer, or a peace officer referred to in paragraph (c) of the definition "peace officer" in section 2 of that Act, for the purpose of taking samples.

PURPOSE

11. The purpose of this policy is to provide guidelines when administering the authority provided under Section 163.4 of the *Customs Act*.
12. This policy and procedures supersedes the Memorandum to Regional Directors, Customs, dated July 6, 2000, regarding the Designation Process/Officer Powers.
13. This policy applies to all border services officers who are designated in accordance with Section 163.4(1) of the *Customs Act*, and all personnel who are involved in the administration process required to designate and/or revoke designation as provided for in this policy.

BACKGROUND

14. In May 1998, Bill C-18, an Act to amend the *Customs Act* and the *Criminal Code* received Royal Assent, and was proclaimed into force on May 1, 2000. The legislation bridged the enforcement gap that previously limited the ability of a border services officer to take action when a *Criminal Code* offence was encountered during the normal course of their duties.

APPENDIX B Designation Cards

15. Under the legislation, the President may designate any officer for the purposes of administering Part VI.1 of the *Customs Act* (Enforcement of Criminal Offences other than Offences under this Act), and provide the officer with a certificate of designation. The Minister has delegated the authority to designate officers to Regional Directors General.

Note: A copy of the delegation authority letter can be found at the end of the Appendix.

POLICY GUIDELINES

16. To qualify for designation, a border Services Officer must successfully complete Officer Powers (OP) training. It is also the policy of the CBSA that an officer will not be designated unless he/she also successfully completes the Control and Defensive Tactics (CDT) Training.
17. A Border Services Officer is designated when the Regional Director General, signs the Designation Document (K160).
18. Designated Officers will be issued a Certificate of Designation card.

Note: regional security officials are responsible for the issuance and control of the Certificate of Designation cards.

19. Designated officers will sign the Acknowledgement of Receipt (section D of the Controlled Asset form (BSF208) when they receive their Certificate of Designation card.
20. Designated officers must attend and complete the CBSA approved training within the CBSA established time frames in order to retain their designated status
21. Designated officers retain their designated status until the Regional Director General, revokes the designation by signing an Amendment – Designation of Officers for the Purposes of Part VI.1 of the *Customs Act* form (K161).
22. The Designation of Officers for the Purposes of Part VI.1 of the *Customs Act* form (K160) and the Designation of Officers for the Purposes of Part VI.1 of the *Customs Act* – Amendment form (K161) are considered the legal instruments to designate and to amend designation. The secure safekeeping of these documents is essential as they may be required in a court of law to substantiate the designated officer's authority.

APPENDIX B Designation Cards

Note: pdf fillable Designation of Officers for the Purposes of Part VI.1 of the *Customs Act* form(K160) and the Designation of Officers for the Purposes of Part VI.1 of the *Customs Act* - Amendment form (K161) can be found on Infozone, Forms & Publications at the following websites:

http://infozone/cbsa-asfc/forms-formulaires/eb-dgel/k160_fill.pdf

http://infozone/cbsa-asfc/forms-formulaires/eb-dgel/k161_fill.pdf

23. The original signed copies of Designation of Officers for the Purposes of Part VI.1 of the *Customs Act* form (K160) and the Designation of Officers for the Purposes of Part VI.1 of the *Customs Act* - Amendment form (K161), if applicable, are to be retained on file in a central regional depository under the jurisdiction of the Regional Director General.
24. A “certified true copy” of the Designation of Officers for the Purposes of Part VI.1 of the *Customs Act* form (K160) and the Designation of Officers for the Purposes of Part VI.1 of the *Customs Act* - Amendment form (K161), where applicable, will be forwarded to the appropriate area for inclusion in each officer’s security file.
25. The original, signed Controlled Asset form (BSF208) will be forwarded to the Corporate Security and Internal Affairs Directorate for inclusion in each officer’s security file.
26. A “certified true copy” of the signed Controlled Asset form (BSF208) will be kept by regional security.
27. Designated officers will retain their designated status and Designation card when they:
 - a) transfer between offices or regions;
 - b) accept a secondment or temporary assignment to an area not requiring designation;
 - c) are temporarily incapacitated for medical reasons or any other reason approved by regional management; or,
 - d) commence long-term leave of absence (4 months less a day).
28. Officers incapacitated due to medical reasons that could hinder ability to affect arrest (i.e. broken limbs or pregnancy), will not be expected to carry out enforcement actions against infractions under the *Criminal Code*.

APPENDIX B Designation Cards

29. When the officer returns to the duties of a designated officer following a secondment, temporary assignment, temporary incapacitation, or long-term leave of absence, they must meet the requirement to attend and complete Control and Defensive Tactics Skills Maintenance training within the CBSA established three-year time frame.
30. Designated officers will have their designation revoked and will surrender their Certificate of Designation card when they:
 - a) no longer meet the CBSA approved criteria of designation (e.g. do not attend and complete Control and Defensive Tactics Skills Maintenance Training within the CBSA established three-year time frame);
 - b) accept a permanent assignment to an area within the CBSA not requiring designation;
 - c) are on extended leave for a period of greater than four (4) months;
 - d) leave the employment of the CBSA.
31. Should a former designated officer return to the duties of an officer, their designated status will be reinstated when the Regional Director General signs a Designation of Officers for the Purposes of Part VI.1 of the *Customs Act* form (K160), and they will be issued with a Certificate of Designation card.
32. Former designated officers must meet the requirement to attend and complete the CBSA approved training (i.e. Control and Defensive Tactics Skills Maintenance) within the CBSA established three-year time frame in order for their designation to be reinstated.
33. The front of the card includes a color photograph or digitized image and the name and surname of the individual, job title, and expiry date (year, month, day) covering a maximum period of five years from the date of issue.
34. The back of the card reads as follows:

The bearer is an employee of the Canada Border Services Agency and is a peace officer pursuant to the *Criminal Code of Canada* in the performance of his/her duties as an officer under the *Customs Act* and/or the *Immigration and Refugee Protection Act*.

APPENDIX B Designation Cards

Pursuant to section 163.4 of the Customs Act, the bearer has been designated by the President of the Canada Border Services Agency and, in accordance with section 163.5 of that Act, has certain powers and obligations of a peace officer with respect to criminal offences while performing the duties of a customs officer at a customs office.

If you find this card, please drop in any mailbox

Ottawa, ON K1A 0L8

35. The back of the card will also bear a JPG image of the President's signature.
36. The designation card will be printed horizontally, to differentiate them from the current identification cards.

ROLES AND RESPONSIBILITIES

Designated Officer

37. A designated officer is responsible for:
 - a) signing the Acknowledgement of Receipt of the Certificate of Designation section of the Controlled Asset form (BSF208) when they receive their Certificate of Designation card;
 - b) reporting immediately the loss, theft, mutilation or destruction of their card to their immediate supervisor and to HQ/regional security and Rigaud Officials. All appropriate documentation shall be completed, including Form BSF152 *Security Incident Report* according to the security policies established in Chapter 15 of the CBSA Security Manual. Further information on security incident reporting procedures may be found at:

How to Report Security Incidents

- c) following local practices when surrendering their Certificate of Designation card when they accept a permanent assignment to an area within the CBSA not requiring designation or leave the employment of the CBSA; and,
- d) notifying a security official of a name change

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Training Unit and/or Technical Trainer

38. The training unit and/or technical trainer is responsible for providing the Officer Powers Regional Coordinator with the names of the officers who were successful in completing the CBSA approved training programs.

Officer Powers (OP) Regional Coordinator

39. The OP Regional Coordinator is responsible for:
- a) ensuring that documentation required to designate or to revoke designation is completed and provided to the Regional Director General for signature;
 - b) ensuring that a certified true copy of the signed Designation of Officers for the Purposes of Part VI.1 of the *Customs Act* form (K160) and the original Controlled Asset form (BSF208) is forwarded to the applicable regional security official, in order for the Certificate of Designation card to be issued to the designated officer;
 - c) ensuring that certified true copies of the signed Designation of Officers for the Purposes of Part VI.1 of the *Customs Act* – Amendment form (K161), and the original completed Controlled Asset form (BSF208) are forwarded to the applicable regional security official, when designation has been revoked, and the Certificate of Designation card is no longer required; and,
 - d) forwarding the signed original Designation of Officers for the Purposes of Part VI.1 of the *Customs Act* form (K160), the signed original Designation of Officers for the Purposes of Part VI.1 of the *Customs Act* – Amendment form (K161), and the completed certified true copy of the Controlled Asset form (BSF208) to the appropriate area for inclusion in each officer's security file.

Director, Program Services

40. The Director, Program Services is responsible for:
- a) monitoring compliance with these policies and procedures;
 - b) ensuring that designated officers continue to meet the CBSA approved criteria for designation (e.g. attend and complete Control and Defensive Tactics Skills Maintenance training every three years from the date of initial Control and Defensive Tactics training or from the date of subsequent Control and Defensive Tactics Skills Maintenance training);

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- c) ensuring that a designated officer who transfers into their area of responsibility is qualified to carry out enforcement actions against infractions under the *Criminal Code* in their jurisdiction (e.g. impaired driving infractions), and if not, provide the appropriate training as soon as is reasonable;
- d) notifying the applicable regional security official to ensure that the control of a designated officer's Certificate of Designation card is transferred when the designated officer is transferred out of or into their area of responsibility;
- e) ensuring the original K160 is transferred to the regional office where the employee will be deployed
- f) ensuring that a former designated officer who returns to the duties of an officer continues to meet the CBSA approved criteria for designation (e.g. attend and complete Control and Defensive Tactics Skills Maintenance training within the CBSA approved three year time frame) and is qualified to carry out enforcement actions against infractions under the *Criminal Code* in their jurisdiction (e.g. impaired driving infractions), and if not provide the appropriate training prior to the officers designation being reinstated;
- g) notifying the Officer Powers Regional Coordinator of regional management decisions to revoke the designated status of a designated officer in order that an "Designation of Officers for the Purposes of Part VI.1 of the *Customs Act* - amendment" (K161 form) may be prepared. (e.g. designated officer leaves the employment of the CBSA);
- h) notifying the regional security office of regional management decisions to revoke the designated status of a designated officer in order that a Controlled Asset form (BSF208) may be completed (e.g. authorized officer leaves the employment of the CBSA); and to ensure the return of the Designation card.
- i) notifying security official of a name change.
- j) notifying the Officer Powers Regional Coordinator when a former designated officer returns to the duties of an officer and qualifies for designation in order that a "Designation of Officers for the Purposes of Part VI.1 of the *Customs Act*" (K160 form) may be prepared; and,

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- k) where an Officer Powers Regional Coordinator is not available or the position does not exist, assigning/delegating the duties of the Officer Powers Regional Coordinator.

Regional Director General

41. The Regional Director General is responsible for:
- a) ensuring compliance with these policies and procedures;
 - b) signing the "Designation of Officers for the Purposes of Part VI.1 of the *Customs Act*" (K160 form) to designate officers who have successfully completed the CBSA approved training programs and qualify for designation; and,
 - c) signing the "Designation of Officers for the Purposes of Part VI.1 of the *Customs Act* - Amendment" (K161 form) to revoke the designation when an officer no longer meets the requirement for designation.

Regional Security Official

42. A Regional Security Official is responsible for:
- a) issuing and controlling the Certificate of Designation card; including having the designated officer sign the completed acknowledgement section of the Controlled Asset form (BSF208), when they receive their Certificate of Designation card;
 - b) forwarding the original signed copy of the Controlled Asset form (BSF208) to the Corporate Security and Internal Affairs Directorate and retaining a copy for inclusion in each officer's security file;
 - c) .when advised of an authorized officer's transfer between regions and/or offices; Regional Security must transfer control of the Certificate of Designation card by forwarding a copy of the BSF208 to the new Regional Security office and by sending the original completed BSF208 to Corporate Security.
 - d) Regional Security to coordinate the transfer of the original K160 to the regional office where the employee will be deployed.
 - e) maintaining a regional repository of names in a database of who has been issued a Designation card.

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Corporate Security and Internal Affairs Directorate

43. The Corporate Security and Internal Affairs Directorate is responsible for:

- a) liaising with the Enforcement Branch on the matters concerning the control and issuance of the Designation card; and,
- b) creating Issuance Procedures to regional security officials on the issuance and control of the Designation card
- c) maintaining a national repository of names in a database of who has been issued a Designation card.

Headquarters – Enforcement Branch

44. The Headquarters Enforcement Branch is responsible for:

- a) developing and modifying the policy and procedures as required;
- b) providing guidance and support to the field; and,
- c) liaising with the Corporate Security and Internal Affairs Directorate on matters concerning the control and issuance of the Certificate of Designation card.

PROCEDURES

45. These procedures are intended to reflect national consistency for the process of designating border services officers for the purposes of administering Section 163.4(1) of the *Customs Act*.

Designation Process

Technical Trainer/Training Unit

46. Advise the OP Regional Coordinator of the names of officers who successfully complete the CBSA approved training for designation (i.e. Control and Defensive Tactics training and/or Officer Powers training).

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Director, Program Services

47. Advise the OP Regional Coordinator of the name(s) of former designated officers who meet the CBSA approved criteria to have their designation reinstated. (e.g. Attend and complete Control and Defensive Tactics Skills Maintenance training within the CBSA established timelines)

OP Regional Coordinator

48. Upon notification that an officer has successfully completed the CBSA approved training programs to qualify for designation, or that a former designated officer meets the CBSA criteria to have their designation reinstated, prepare the "Designation of Officers for the Purposes of Part VI.1 of the *Customs Act*" (K160 form) for the Regional Director's General signature.

Note: The "Designation of Officers for the Purposes of Part VI.1 of the *Customs Act*" (K160 form) is the legal instrument to designate an officer. The officer's full legal name and badge number must be used when completing this document (e.g. Anthony John Smith Badge # 12345).

49. Provide the Regional Director General with the "Designation of Officers for the Purposes of Part VI.1 of the *Customs Act*" (K160 form) for signature.
50. Arrange to have a "certified true copy" of the signed "Designation of Officers for the Purposes of Part VI.1 of the *Customs Act*" (K160 form) forwarded to the appropriate area for inclusion in the designated officer's security file.
51. Forward the original of the signed "Designation of Officers for the Purposes of Part VI.1 of the *Customs Act*" (K160 form) to the regional security official to initiate the issuance of a Certificate of Designation card.

Regional Director's General Office or Delegate

52. File a copy of the signed "Designation of Officers for the Purposes of Part VI.1 of the *Customs Act*" (K160 form) in a central regional depository under the jurisdiction of the Regional Director General.

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Amendment Process (Revoking Designation)

Regional Director General or delegate

53. Advise the OP Regional Coordinator of regional management's decision to revoke the designated status of a designated officer who no longer meets the requirements for designation.

OP Regional Coordinator

54. Upon notification that a designated officer no longer meets the requirements for designation, prepare the "Designation of Officers for the Purposes of Part VI.1 of the *Customs Act - Amendment*" (K161 form) for the Regional Director's General signature.

Note: The "Designation of Officers for the Purposes of Part VI.1 of the *Customs Act - Amendment*" (K161 form) is the legal instrument to amend (revoke) the designation of a designated officer; the officer's full legal name and badge number must be used when completing this document.

55. Provide the Regional Director General with the "Designation of Officers for the Purposes of Part VI.1 of the *Customs Act - Amendment*" (K161 form) for signature.
56. Complete the Controlled Asset form BSF208 and submit with the K161 form for signature.
57. Arrange to have the original signed "Designation of Officers for the Purposes of Part VI.1 of the *Customs Act - Amendment*" (K161 form) forwarded to the Regional Director's office for inclusion in the designated officer's security file.
58. Forward a "true certified" copy of the signed "Designation of Officers for the Purposes of Part VI.1 of the *Customs Act - Amendment*" (K161 form) to the regional security official responsible for the control of the Designation card.

Regional Director's Office or Delegate

59. File the signed original "Designation of Officers for the Purposes of Part VI.1 of the *Customs Act - Amendment*" (K161 form) in a central regional depository under the jurisdiction of the Regional Director General.

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Issuance of Certificate of Designation Card Process

Regional Security Official

60. The issuance of the Certificate of Designation card is the responsibility of regional security official.
61. On receipt of a copy of the signed "Designation of Officers for the Purposes of Part VI.1 of the *Customs Act*" (K160 form), and the Controlled Asset form (BSF208) the regional security official will issue a Certificate of Designation card following procedures outlined in Corporate Security and Internal Affairs Directorate's directives
62. Ensure that the designated officer signs the acknowledgement section of the Controlled Asset form (BSF208) on receiving their Certification of Designation card.
63. Forward the signed original of the Controlled Asset form (BSF208) to the Corporate Security and Internal Affairs Directorate, along with certified true copy of the "Designation of Officers for the Purposes of Part VI.1 of the *Customs Act*" (K160 form) for inclusion in the designated officer's security file.

Transfer (Deployment) Process (Certificate of Designation card)

Director, Program Services

64. Advise the regional security official of a designated officer's transfer (deployment) prior to the designated officer relocating.
65. Provide the following information:
 - a) Designated officer's full legal name and badge number;
 - b) Certificate of Designation number;
 - c) The CBSA office and/or region the designated officer is transferring to; and,
 - d) The date that the transfer/deployment takes effect.
66. When notified that a designated officer is transferred/deployed, follow the procedures provided for in the Corporate Security and Internal Affairs Directorate's directives "Certificate of Designation Cards, Control and Issuance Procedures – Field Offices".

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Regional Security Official

67. Ensure that the designated officer signs the appropriate area of the Controlled Asset form (BSF208) to transfer their Certification of Designation card.
68. A “certified true copy” of the Controlled Asset form (BSF208) is returned to the regional security office for inclusion in the officer’s security file.
69. Forward the original Controlled Asset form (BSF208) to the Corporate Security and Internal Affairs Directorate, for inclusion in the designated officer’s security file.

REFERENCES

Customs Act

Criminal Code

Management Services Manual

The Corporate Security and Internal Affairs Directorate Manual

CBSA ENFORCEMENT MANUAL

Part 9

INVESTIGATIONS AND CRIMINAL PROCEEDINGS

Chapter 1

CBSA PROSECUTION POLICY

25/05/12

PURPOSE AND SCOPE

1. The purpose of this chapter is to provide a clear description of the role of Investigations in order to improve communication and the sharing of information with in CBSA, and to enhance the referrals to the Criminal Investigations program.
2. This policy applies to all CBSA personnel.

DEFINITIONS

3. Refer to Part 11 - Glossary.

AUTHORITIES

4. Sections 11 to 13, 124 and 153 to 163 of the *Customs Act*.
Sections 91, 117-119, 122, 124, 126-127, 129 and 13 of the *Immigration and Refugee Protection Act*.

BACKGROUND

5. There is a greater imperative to focus on complex or high-risk investigations which pose a threat to the health and safety of Canadians, the economy and the environment.

Complex investigations are defined as cases, under any legislation, that go beyond a single incident, often requiring follow-up investigation or use of specialized investigative techniques (i.e. search warrants, production orders, surveillance, etc.) to gather evidence to support the offence or previous offence(s). Complex cases may involve a corporate entity/individual with multiple incidents, transactions, or occurrences of fraud and may include a civil penalty in addition to criminal charges.

High-risk investigations are defined as cases involving goods or persons presenting at least one, but not limited to, the following aggravating factors: previous enforcement or conviction, concealment and evidence of illicit or clandestine means

POLICY STATEMENT

6. All referrals of suspected offences are encouraged. These referrals will be reviewed with the objective of prioritizing those cases which represent the most efficient use of investigative resources in support of National Priorities.
7. Generally, regulatory enforcement measures are most appropriate for the majority of non-compliance encountered by the CBSA, particularly at the Port of Entry (POE).

POLICY GUIDELINES

8. Since not every incident of non-compliance will merit a criminal investigation, the following principles should be employed by operational staff in determining whether an incident should be referred for criminal investigative follow-up:

PROSECUTION PRINCIPLES

9. The following principles must be considered by regional criminal investigations staff prior to initiating an investigation:
 - Does this offence merit a criminal investigation?
 - Is the offence of a complex or high-risk nature?
 - Is there a strong public interest in investigating this case?
 - Is there an ongoing disregard for border legislation?
 - Is there any internal intelligence available or leading this investigation?
 - Is this incident related to a larger pattern of criminality?
 - Does this offence have prosecution potential?

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- Is the initial referral and evidence collected (if any) supportive and sufficient?
- Are there any concerns about violations of the *Canadian Charter of Rights and Freedoms* in the areas of rights against unreasonable search and seizure, self-incrimination, or knowing the case against the accused will be fully disclosed before the Court?
- Is another law enforcement agency currently investigating this subject or matter?

In addition to these prosecution principles, there may be further considerations particular to the legislation under which the offence would be prosecuted, as described below.

IMMIGRATION CONSIDERATIONS

10. Complex or high-risk investigations involving at least one aggravating factor should be considered for prosecution.

Considering the strongest deterrence measure, has removal been considered as an appropriate remedy?

Based on humanitarian and compassionate grounds, charges would rarely be appropriate in the following scenarios:

IMPORT AND EXPORT CONSIDERATIONS

11. Complex or high-risk investigations involving at least one aggravating factor should be considered for prosecution

Based upon a violation involving the movement of goods, charges are less likely to be pursued if:

National Priorities

12. The National Priorities for Criminal Investigations are stemming directly from the CBSA Integrated Intelligence and Enforcement Priorities. They are issued to direct program efforts into priority areas of non-compliance. The current priorities for the Immigration and Import/Export components of the program can be found in **Appendix A** attached to this Chapter. Although only the National Priorities are outlined in this document, the scope of the Criminal Investigations' mandate remains unchanged, including but not limited to cases relating to illegal importation of food, plant and animals.

Referrals for Criminal Investigations should continue for all offences related to border legislation.

Division of responsibility with the RCMP:

13. Incidents of fraud (with the exception of the smuggling of narcotics) should be discussed with Criminal Investigations to determine the appropriate agency to investigate the matter. Agreements have been signed which lay out the areas of responsibility. (Refer to Written Collaborative Arrangements and Agreements on the CBSA Intranet)

ROLES AND RESPONSIBILITIES

Investigators

14. Investigators are responsible for:
 - a) acknowledging receipt of all referrals received;

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- b) investigating the alleged offences;
- c) consulting with the Department of Justice to determine whether a prosecution is warranted;
- d) advising the referring agency of the status of the investigation; and
- e) referring cases to other divisions and/or OGDs for follow-up action (e.g. collection of duties and taxes by Compliance Verification).

Border Services Officers (BSOs)

15. BSOs are responsible for:

- a) referring all seizures that fall within the Investigations mandate to their regional Criminal Investigations Division or to the RIO as directed by regional policy; and
- b) providing all pertinent details in referrals, whether verbal or written, including the reasons for believing that an offence has occurred and all relevant documentation pertaining to a suspected offence.

REFERENCES

Customs Act and Regulations

Immigration and Refugee Protection Act and Regulations

Export and Import Permits Act and Regulations

Criminal Code

Tobacco Act

WAPPRIITA

Excise Act

United Nations Act and Regulations

Department of National Revenue, Division of Investigative and Enforcement

Responsibilities (Ministerial Directive)

Investigations Manual

Appendix A

National Priorities for Criminal Investigations

Import and Export Priorities:

The import and export component of the Criminal Investigations Division is focused primarily on significant illegal imports and exports which pose a threat to the health and safety of Canadians, the economy and the environment in the following areas:

- Weapons smuggling
- Counter proliferation
- Alcohol or tobacco smuggling
- Trade Fraud

Immigration Priorities:

The immigration component of the Criminal Investigations Division is focused primarily on organizers, facilitators and perpetrators of fraud who pose a threat to the integrity of Canada's immigration system in the following areas:

- Consultant Fraud
- Marriages of Convenience
- Residency Fraud
- Employment Fraud
- Human Smuggling

CUSTOMS ENFORCEMENT MANUAL

Part 9

INVESTIGATIONS AND CRIMINAL PROCEEDINGS

Chapter 2

CUSTOMS PROSECUTION PROCEDURES

30/03/04

INTRODUCTION

1. The purpose of this chapter is to outline the procedures to follow when prosecutions under the *Customs Act* are considered. It is designed as a tool for customs officers to complement Part 9, Chapter 1, Customs Prosecution Policy, and the guidance provided by investigators and any other law enforcement agencies involved in prosecutions related to the *Customs Act*.

GENERAL

2. There are provisions for imposing both criminal and civil sanctions under the *Customs Act*. Criminal prosecutions are undertaken when an additional deterrent is warranted due to the seriousness of the offence and the potential harm to society. Investigations are responsible for initiating all prosecutions relating to the *Customs Act* (with the exception of narcotics).
3. Investigations' mandate is to conduct criminal investigations into suspected cases of smuggling or fraud with respect to the *Customs Act*, the *Customs Tariff Act*, the *Excise Tax Act*, the *Excise Act* and the *Export and Import Permits Act* (among others) and to prosecute in each case where sufficient evidence is obtained to support convictions for deliberate or wilful evasion with respect to these acts and others enforced by the Canada Border Services Agency (CBSA).
4. In most cases, Investigations will perform all of the necessary duties related to the criminal investigation. However, depending on the circumstances of the case and the location of the offence, Investigations may ask other law enforcement agencies for assistance or turn the entire matter over to another agency. The decision to refer a case to another agency rests with the Director of Investigations.

PORT PROSECUTIONS

5. Port prosecutions are usually initiated at the time of a seizure or the issuance of a Notice of Penalty Assessment (NPA). Part 9 Chapter 1 of this manual contains guidelines on the types of offences that Investigations will investigate. When customs officers encounter situations where the prosecution guidelines are met, they may, arrest the person and advise them of their right to counsel and then contact Investigations. Further, if customs officers are unsure if the guidelines have been met, or how to proceed, they should discuss the matter with their superintendent and/or contact Investigations for clarification and guidance. Arrest procedures are described in more detail in Part 6, Chapter 1 of this manual.

6. Regions may have different procedures for customs officers to follow when making referrals to their respective Investigations unit. In many regions, Regional Intelligence Officers (RIOs) are the initial point of contact for customs officers for all significant interdictions, regardless of the nature of the offence. Timely notification of Investigations will ensure that investigators have the opportunity to take statements from the parties involved and to secure evidence in accordance with the *Charter of Rights and Freedoms*. In situations where a local SOP advises customs officers to contact Investigations directly, customs officers are responsible for informing RIO's of the incident via the Occurrence Reporting System (ORS).
7. An investigator will assess the situation and advise the officer as to the proper course of action to be followed. In many cases, an investigator will be dispatched to complete legal formalities including taking statements, securing evidence and interviewing witnesses.

OTHER REFERRALS TO INVESTIGATIONS

8. It is common for customs officers to uncover indications of customs fraud over a period of time. These usually relate to commercial matters. At the time that they decide that a referral to Investigations is warranted, officers may not have sufficient grounds to issue an NPA, seize goods or arrest someone. In these situations, officers should consult with their superintendent, contact Investigations and await further instructions from an investigator.
9. If an immediate response to the customs office is not possible, customs investigators will ask officers to send them a referral. Customs officers should ensure that their reports provide sufficient details of the circumstances of the offence, the actions taken, and the reasons why they believe prosecution is justified. The superintendent involved with the proceedings should review the report, and may add comments as well.
10. An investigator will seek to establish a pattern of behaviour over a certain period of time for the subject(s) of the investigation. This could be persistent undervaluation of an imported commodity, misdescription of strategic goods to evade export controls, using transshipment fraud to conceal the true origin of imported goods, etc. Once sufficient evidence is collected, an investigator will seek the approval of the Director of Investigations and Crown counsel to lay charges against the subject(s).

HINDERING AN OFFICER

11. Amendments to the *Customs Act* include the addition of section 153.1, which prohibits a person from hindering or preventing an officer from doing their duty. Investigations will investigate these offences when they involve persons interfering with an officer who is performing “traditional” *Customs Act* duties and the interference does not constitute an assault or a threat.
12. The first reaction for customs officers who encounter interference or uncooperative behaviour should be to attempt to defuse the situation using all available resources, including the intervention of a superintendent.
13. The following examples describe situations where officers are performing “traditional” *Customs Act* duties and an arrest for hindering an officer may be warranted (assuming all attempts to resolve the situation by other means have failed):
 - a) At the “point” area of an airport, a customs officer refers a traveller to secondary but the person does not comply, does not respond to multiple requests to comply, refuses to discuss the matter with the superintendent and prevents the point officer from processing other travellers.
 - b) A traveller is referred to secondary for examination after which he refuses to leave. Instead, he encourages others not to cooperate with Customs, purposely interferes with other examinations and intrudes on other travellers’ rights to privacy.
 - c) At customs secondary, an officer finds undeclared goods. Upon their discovery, the traveller starts destroying evidence of the offence by tearing up the invoices.
14. In such instances, officers should arrest the person and read them the following statement followed by the standard cautions and warnings:

“I am arresting you, under the provisions of section 153.1 of the Customs Act for hindering an officer.”
15. Once a person has been arrested, cautioned and warned, Investigations must be contacted. An investigator will assess the situation and advise the officer as to the proper course of action to be followed. In most cases an investigator will respond to the port to take statements and gather evidence. In accordance with the Customs Prosecution Policy outlined in Part 9 Chapter 1 of this manual, investigators will seek their Director’s approval prior to laying charges. In some regions, Investigations may refer the matter to the RCMP or the local police. If it is decided that prosecution is not appropriate, the person is to be released from arrest and the normal customs process should continue.

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16. Assaulting or threatening customs officers are violations of section 270 and 264.1 of the *Criminal Code* respectively. These matters must be immediately referred to the appropriate police agency.
17. If officers are prevented from enforcing the *Criminal Code* in the course of performing "Officer Powers" duties, then the matter should be dealt with in accordance with the *Criminal Code* and turned over to the appropriate police agency. "Officer Powers" duties include demanding a breath sample, processing individuals who are the subject of outstanding warrants, processing individuals who are in possession of property obtained by crime, processing persons who are suspected of having abducted or kidnapped another person.
18. When completing arrest reports in ICES, officers should ensure that they identify the offence as "*Customs Act* and *Criminal Code*" and the reason as "Obstructing or Assaulting a Peace Officer" depending on the nature of the event.

RIGHTS AND CAUTION

Note: The following directives are in addition to the procedures described in Part 6 Chapter 1 of this manual.

19. Officers must be concerned about the admissibility of any statements made by a person who is arrested or detained at Customs. As soon as it becomes apparent to an officer that charges could be laid as a result of a contravention (or the officer thinks that the matter will be referred for prosecution), the client or the client's agent is to be advised of the possibility of prosecution, advised of their right to retain and instruct counsel without delay and cautioned about making statements. The following caution must be read to the client:

"Sir (or Madam), I wish to advise you that charges MAY be laid against you (or your company) for violation of the *Customs Act*. You need not say anything. You have nothing to hope from any promise or favour, or nothing to fear from any threat, whether or not you do say anything. Anything you do say may be used in evidence. Do you understand?"

20. Prior to advising persons that charges under the *Customs Act* may be laid, officers should discuss the matter with their superintendents. Where it is not possible to discuss matters beforehand, officers should follow procedures concerning advice and caution, and notify their superintendents as soon as possible.

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21. Following the caution, it is essential that the alleged offender be asked whether the caution was understood. The answer to this question must be recorded in the officer's notes as well as any spontaneous remarks made by the person. These notes must include details of any questions asked, answers given, persons involved, evidence found, etc. In addition, the physical appearance, bearing and demeanour of the alleged offender should be noted, as well as the ability or inability of the person to understand the discussions. A record must also be made of all other individuals who came into contact with the alleged offender.

Note: Please refer to Part 6, Chapter 1 of this manual for a complete description of arrest procedures.

22. Where an arrested or cautioned person requests to speak to counsel, the officer will provide access to a telephone and a private room.
23. If counsel asks to speak to the customs officer or superintendent, the requests should be accommodated. Any conversation should be restricted to matters such as the reason for arrest, or the seizure allegations and the procedures that will be followed. Officers should never allow themselves to be drawn into discussions involving legal justifications for actions taken or possible "deals" in return for co-operation.

YOUNG PERSONS

24. When investigators (or customs officers) arrest persons who appear to be between the ages of 12 and 18, they should be asked to state their age and produce identification. If the subject is between the ages 12 to 17 inclusive, the arrest must adhere to the provisions of the *Youth Criminal Justice Act* (YCJA).
25. Sections 6, 8 and 10 of the YCJA identify types of measures that can be used instead of court proceedings. An investigator, before charging a young person, must take account of the principles in section 4 of the YCJA and consider whether it would be sufficient to:
 - a) take no further action;
 - b) give the young person an informal warning;
 - c) give the young person a formal caution;
 - d) refer the young person to a community program or agency to assist the young person in not committing offences; or
 - e) refer the young person to an extrajudicial sanctions program.

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Note: If the grounds for a charge are not present, the investigator should not use a warning, caution or referral as a means of dealing with the matter.

26. Young persons who are arrested or detained must be advised without delay about the right to counsel by the arresting officer. The officer must also provide the young person with an opportunity to obtain counsel. The right to counsel belongs to the young person. It is not exercised through a parent or guardian.

Note: For further details, refer to Part 6, Chapter 3, Arrest and Detention of Young Persons Policy and Procedures.

INTERVIEWS AND EVIDENCE

27. In most cases, customs investigators will interview the subject and take their formal statements. However, there may be occasions when customs officers will be required to conduct the interview. If the person requests the presence of legal counsel during the interview and counsel agrees to attend, this request should be accommodated and the interview deferred until such time as counsel arrives.

Note: When obtaining a written statement, form E 368 should be used.

28. It should be noted that the decision to conduct or delay the interview should not preclude the completion of formalities relating to the seizure or the issuance of the NPA. In this regard, the officer should secure all information and physical or documentary evidence relating to the goods and the offences. Details such as the full name and mailing address of the individual and company concerned, the person's date of birth and other basic information taken from a driver's licence or passport, should be recorded. In the absence of these details, it may be difficult to issue a summons if charges are laid.
29. Taking statements and seizing evidence is a crucial step towards successful prosecution. For complete instructions, please refer to the chapter on Evidence and Statements in Part 10, Chapter 2 of this manual.

COURT EXHIBITS

30. For *Customs Act* offences, evidence may be seized pursuant to section 110(3) using form E352 *Evidence Seizure Receipt*. If the goods were already seized as forfeit pursuant to section 110 (1) or (2), form K19S *Customs Seizure Receipt* should be used to document the seizure. In order to transfer the evidence to another location (including Investigations) form K129 *Exhibit Control* must also be completed (in addition to forms K19 or E352). Form K129 is to be endorsed to indicate that the goods must be returned to the CBSA at the conclusion of the court proceedings.

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31. When another agency proceeds with the prosecution and the goods or documents required as evidence are not already confiscated or abandoned, the other agency must seize the exhibits themselves using the appropriate legal authorities and forms (including warrants). Form K129 is only an exhibit control form. It does not provide the CBSA or any other agency with the authority to seize exhibits. The use of form E352 is restricted to present cases where there has been a contravention (or an attempted contravention) of the *Customs Act* or its regulations. Form E352 (section 110(3)) cannot be used to seize evidence of contraventions that occurred in the past or will occur in the future or for contraventions of other Acts of Parliament.

Note: Pornographic material should be documented on form K27. Please refer to Part 2, Chapter 14 of this manual.

32. Civil penalties (seizures, ascertained forfeitures and NPAs) are separate and distinct actions from a criminal prosecution. If the court acquits the individual, the civil penalties are not automatically overturned. Officers should consult with Investigations and/or Adjudications prior to releasing any seized goods upon the completion of a prosecution.
33. Where the Court orders the goods to be confiscated or returned to the individual from whom they were seized, Investigations must immediately notify the Adjudications Division, prepare a report, and submit it shortly thereafter. In all cases, the relevant customs documentation (forms E650, E352, K19S, K19, K24, K27, K129, etc.) is to be cross-referred to create an audit trail.

ROLES AND RESPONSIBILITIES

Customs Officers

34. Customs officers are responsible for:
 - a) notifying their superintendent as soon as possible when smuggled or otherwise unlawfully imported goods are discovered and/or persons are arrested for suspected *Customs Act* violations;
 - b) ensuring that goods and evidence are seized and persons are arrested in accordance with legislative requirements and these policy and procedure guidelines;
 - c) maintaining an open line of communication with Investigations; and
 - d) recording and maintaining detailed notes of an occurrence in the issued Customs Notebook (CE1) and preparing the necessary documentation for further investigation and prosecution.

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Prosecution Procedures

Customs Superintendents

35. Customs superintendents are responsible for:

- a) ensuring adherence with these policies and procedures;
- b) ensuring that Investigations is contacted whenever there is potential for prosecution for Customs violations (with the exception of narcotics); and
- c) taking appropriate corrective action on any breaches of this policy.

Investigators

36. Investigators are responsible for:

- a) acknowledging receipt of all referrals received;
- b) providing guidance to customs officers and superintendents involved in port prosecutions and other referrals to investigations;
- c) investigating the alleged offences;
- d) consulting with the Director of Investigations and the Department of Justice to determine whether a prosecution is warranted;
- e) advising the referring agency of the status of the investigation; and
- f) referring cases to other custom divisions and/or OGDs for follow-up action (e.g. collection of duties and taxes by Compliance Verification).

Regional Intelligence Officers

37. Regional Intelligence officers are responsible for:

- a) forwarding referrals received from ports of entry to Investigations in a timely manner;
- b) considering whether requests for assistance received from other law enforcement agencies involve offences that are part of Investigations's mandate and consulting as appropriate; and,
- c) determining whether information referred to them has intelligence value
- d) consulting with Investigations to determine whether the matter should be referred to another agency in addition to Investigations (in accordance with section 107 of the *Customs Act*).

CUSTOMS ENFORCEMENT MANUAL

Part 9

INVESTIGATIONS AND CRIMINAL PROCEEDINGS

Chapter 3

EVIDENCE AND STATEMENTS

27/04/05

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to professionally collect evidence of *Customs Act*, *Criminal Code*, or any other Act of Parliament contraventions where criminal prosecution is a possibility and to treat the evidence with due care.

DEFINITIONS

2. Refer to Part 11 - Glossary.

AUTHORITIES

Customs Act

3. Subsection 110(1) authorizes officers that have reasonable grounds to believe that this Act or its' regulations have been contravened with regard to goods, to seize without terms of release:
 - a) goods; or
 - b) any conveyance they have reasonable grounds to believe was used in respect of the goods either at or after the time of the contravention.
4. Subsection 110(3) authorizes an officer who believes on reasonable grounds that this Act or the regulations have been contravened, to seize anything that the officer believes on reasonable grounds will afford evidence in respect of the contravention.
5. Subsection 114(2) obligates an officer who seizes anything as evidence under this Act, to report the circumstances of the case.
6. Subsection 114(3) requires that anything seized as evidence alone be returned on completion of all proceedings.
7. Subsection 115(1) authorizes an officer to copy any record examined or seized. A copy certified by the Minister, or a person authorized by the Minister, is admissible in evidence.
8. Subsection 115(2) restricts the detention of a record seized as evidence to three months unless: the person from who it was seized agrees to further detention for a specified time; a justice of the peace orders its further detention for a specified time; or the record is required for instituted judicial proceedings.

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Criminal Code

9. Subsection 489(2) authorizes a designated officer in the execution of duties to, without a warrant, seize anything that the officer believes on reasonable grounds will afford evidence in respect of an offence against this or any other Act of Parliament.

Canadian Charter of Rights and Freedoms

10. Section 11 states that any person charged with an offence has the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.

Youth Criminal Justice Act

11. Subsection 146(2) states that no oral or written statement made by a young person who is less than eighteen years old, to a peace officer or other person of authority, on the arrest or detention of the young person or in circumstances where the peace officer or other person of authority has reasonable grounds for believing that the young person has committed an offence is admissible against the young person unless:
 - a) the statement was voluntary;
 - b) the person to whom the statement was made has, before the statement was made, clearly explained to the young person, in language appropriate to his or her age and understanding, that
 - i) the young person is under no obligation to make a statement,
 - ii) any statement made by the young person may be used as evidence in proceedings against him or her,
 - iii) the young person has the right to consult counsel and a parent or other person in accordance with paragraph c), and
 - iv) any statement made by the young person is required to be made in the presence of counsel and any other person consulted in accordance with paragraph c), if any, unless the young person desires otherwise;
 - c) the young person has, before the statement was made, been given a reasonable opportunity to consult
 - i) with counsel, and

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- ii) with a parent or, in the absence of a parent, any other appropriate adult chosen by the young person, as long as that person is not a co-subject, or under investigation, in respect of the same offence; and
 - d) if the young person consults a person in accordance with paragraph c), the young person has been given a reasonable opportunity to make the statement in the presence of that person.
- 12. Subsection 146(3) provides the exception in certain cases for oral statements. The requirements set out in paragraphs (2) b) to d) do not apply in respect of oral statements if they are made spontaneously by the young person to a peace officer or other person in authority before that person has had a reasonable opportunity to comply with those requirements.
- 13. Subsection 146(4) provides the young person the waiver of right to consult. A young person may waive the rights under paragraph (2) c) or d) but any such waiver
 - a) must be recorded on video tape or audio tape, or
 - b) must be in writing and contain a statement signed by the young person that he or she has been informed of the right being waived.

PURPOSE AND SCOPE

- 14. The purpose of this chapter is to outline the nature and types of evidence and the procedures for CBSA officers to follow when obtaining and handling evidence.

BACKGROUND

- 15. A CBSA officer may suspect a person of having committed an offence, however, the person is not guilty of having done so until the offence is proven in a court of law. To prove the offence, the officer must gather and present evidence that substantiates the allegation.
- 16. By definition, evidence is that which serves to prove or disprove a belief or a conclusion. Evidence in criminal matters is whatever serves, as proof that the person charged with an offence is either guilty or innocent. Evidence can be oral, written or can consist of physical exhibits (such as the goods seized).

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Evidence and Statements

17. Before the court accepts evidence, it must meet two conditions. First, it must be relevant to the matter at hand (i.e., have a bearing upon, or be connected with, the matter). Secondly, the evidence must be determined by the court to be admissible. In this respect, it must meet certain criteria. For example, hearsay evidence is not admissible; the authenticity of documents must be proved, as must the continuity of possession of exhibits.
18. The actual relevance of evidence to be presented will be determined by Crown Counsel before it is introduced to the court. The court itself when deciding whether to accept the evidence will make a further determination of relevancy.
19. CBSA officers should be primarily concerned with their responsibility for the control of seized evidence. The control, or the lack thereof, will affect the admissibility of evidence in court. In this regard, officers who offer physical evidence must be able to account for the custody of the evidence from the moment it comes into their possession until the moment it is offered in evidence. This is known as the "Chain of Custody" and is commonly referred to as the continuity of evidence.
20. Statements made by a traveller may also be considered as evidence. These may be in the form of spontaneous declarations such as an admission of guilt, or they may be a formal statement pursuant to questioning by an officer. In either form before the statement can be admissible as evidence, the court must be satisfied that it was made freely and voluntarily.
21. The rules governing the admissibility of statements (commonly referred to as the "Judges Rules") are applicable to all statements made to a person(s) in authority. A person in authority is generally accepted to mean anyone connected with the arrest, detention, examination or prosecution of the subject, or anyone whom the subject believes may influence the case.
22. To ensure that a statement is considered voluntary, officers must be able to prove to the court that the statement was made without fear or inducement. In this regard, an inducement can be described as anything said or done by a person in authority, which would lead the subject to believe his position with respect to the charge will be better or worse dependent on the uttering of the statement.

POLICY GUIDELINES

Seizing as evidence

23. An officer may seize anything that he or she believes on reasonable grounds will afford evidence in respect of a contravention of the *Customs Act*, the *Criminal Code* or any other Act or Parliament.

Note: Refer to Part 6, Chapter 7 *Criminal Code* Offences and Part 5, Chapter 3, *Criminal Code* - Seizure of Evidence and Goods

24. An officer will associate anything seized as evidence under the *Customs Act*, to a specific contravention of the *Customs Act*. Anything seized as evidence under the *Criminal Code* or another Act must be associated with the applicable contravention of that legislation.

25. An officer may seize goods as evidence of a current contravention.

Note: An officer cannot seize a conveyance with an empty hidden compartment because there is a belief that the conveyance was used to smuggle goods in the past or will be used to do so in the future.

26. An officer will only seize goods as evidence when there is a potential for prosecution. To determine if the case meets the prosecution thresholds, and to receive further instructions, officers will contact the CBSA Investigations Division. The CBSA investigators may contact the police or other government department to determine if they will pursue prosecution when it is not a *Customs Act* contravention.

Note: Refer to Part 9, Chapter 1, Customs Prosecution Policy.

Note: Refer to Part 6, Chapter 7, Criminal Code Offences and Part 5, Chapter 3, Criminal Code – Seizure of Evidence and Goods.

27. An officer may seize records, books or documents that relate to imported or exported goods and will seize the originals rather than make photocopies, except when specified.

Note: Photocopying personal information not related to enforcing the *Customs Act* may be interpreted as an unlawful seizure under section 8 of the *Charter of Rights and Freedoms*.

Note: Refer to Part 4, Chapter 3, Personal Baggage, Goods and Conveyance Examination for more information on the procedures for examining and photocopying personal documents.

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Evidence and Statements

28. The following are some examples of when officers may seize goods as evidence:
- a) The discovery of a second invoice for a personal vehicle is found showing a higher value than was previously reported. The CBSA Investigations Division decides to pursue prosecution action. The CBSA officers should seize the vehicle as forfeit under 110(1) and both sets of invoices as evidence pursuant to 110(3);
 - b) A person willfully attempts to significantly mis-describe, undervalue or smuggle high-value goods and the CBSA Investigations Division decides to initiate prosecution proceedings. The goods should not be seized and released after payment of a penalty (i.e. under subsection 110(1)) but rather the goods should be seized as evidence (i.e. under subsection 110(3)) and held pending further instructions from the CBSA Investigations Division.
- Note: This does not apply to alcohol, tobacco, weapons, drugs or child pornography, which is to be seized as forfeit with no terms of release rather than seized as evidence.
- c) The discovery of a large amount of diamonds concealed in the false lining of a traveller's suit jacket leads to an examination of his laptop computer. The laptop examination reveals electronic mail instructions on how to smuggle and where to deliver the diamonds. The laptop should be seized pursuant to 110(3).

Chain of Custody

29. Officers must treat anything seized as evidence as a potential court exhibit. It is important that the chain of custody or continuity of possession be maintained and the exhibits properly handled.

Return of Evidence

30. Officers will not release goods seized as evidence until completion of all proceedings. CBSA Investigations Division will provide instructions.
31. Officers will not detain records seized as evidence for more than three months unless the person from whom it was seized agrees, a justice of the peace orders a longer detention or judicial proceedings are instituted. The CBSA Investigations Division will provide instructions.

ROLES AND RESPONSIBILITIES

CBSA Officers

32. CBSA officers are responsible for:

- a) adhering to the policy and procedures outlined in this chapter;
- b) enforcing the *Customs Act*, *Criminal Code* and other federal statutes in accordance with legislative requirements, established policies, and standard operating procedures;
- c) seizing evidence as required;
- d) recording and maintaining detailed notes of evidence seized, in the issued CBSA Notebook (CE 1) and preparing the necessary documentation for further investigation and prosecution;
- e) notifying their superintendent as soon as possible when smuggled or otherwise unlawfully imported goods and/or evidence is seized and/or persons are arrested for suspected *Customs Act* violations;
- f) ensuring the chain of custody of all evidence seized;
- g) ensuring all evidence seized is stored in a safe and secure manner prior to being transferred to the CBSA Investigations Division or responding police agency;
- h) labeling and sealing all evidence in the CBSA evidence bags;
- i) taking statements of individuals when required;
- j) ensuring all evidence is properly transferred to the CBSA investigator or the responding police agency; and
- k) maintaining an open line of communication with the CBSA Investigations Division.

CBSA Superintendents

33. CBSA superintendents are responsible for:

- a) ensuring adherence with the policy and procedures outlined in this chapter;

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- b) ensuring that the CBSA Investigations Division is contacted whenever there is potential for prosecution for *Customs Act* violations (with the exception of narcotics);
- c) ensuring officers are provided the necessary time to take statements, seize all necessary evidence and complete all necessary paperwork;
- d) contacting the Regional Intelligence Officer (RIO), or responding police agency when necessary;
- e) recording and maintaining detailed notes of any involvement they had in the case in the issued CBSA Notebook (CE 1) and preparing the necessary documentation for further investigation and prosecution; and
- f) taking appropriate corrective action on any breaches of this policy.

Regional Intelligence Officer

34. RIO's are responsible for:

- a) taking statements from individuals when necessary and recording and maintaining detailed notes of these interviews in the issued their notebook;
- b) consulting with the CBSA Investigations Division to determine whether the matter should be referred to another agency in addition to the CBSA Investigations Division (in accordance with section 107 of the *Customs Act*); and
- c) contacting the RCMP when the CBSA Investigations Division does not wish to take custody of the goods;

CBSA Investigations Division

35. CBSA Investigations Division is responsible for:

- a) consulting with the Director of Investigations and the Department of Justice to determine whether a prosecution is warranted;
- b) referring cases to other CBSA divisions and/or other government departments for follow-up action;
- c) ensuring chain of custody for seized goods transferred to their possession;
- d) holding evidence for court purposes in a safe and secure manner;

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- e) providing instructions regarding the release of goods seized as evidence;
- f) obtaining extensions for the detention of evidence for periods greater than 3 months;
- g) reviewing all evidence seizures after 60 days from the date of seizure; and
- h) taking formal statements and recording and maintaining detailed notes of these interviews in the issued CBSA notebook (CE 1).

Regional Directors of Investigations

36. Regional Directors of Investigations are responsible for:

- a) reviewing appeals of the seizure of evidence;
- b) determining appropriate course of action for an appeal to the seizure of evidence;
- c) advising the appellant to file appropriate documents with the court regarding seizures of evidence that lead to criminal charges;
- d) authorizing the return of evidence; and
- e) advising the appellant to appeal to the CBSA Recourse Division when evidence is required to support civil actions.

Enforcement Branch

37. The Enforcement Branch is responsible for:

- a) providing guidance to the field regarding the collection of evidence and the taking of statements;
- b) developing, modifying and approving policies in accordance with court jurisprudence, related to the seizure of evidence and the taking of statements;
- c) developing, modifying and delivering training courses related to the taking of statements and collection of evidence; and
- d) monitoring adherence with this policy and procedures by the regions.

PROCEDURES

Note: The procedures of this chapter outline some of the usual procedures that may occur during the course of seizing and preserving evidence and statements.

38. Verify there is a potential for prosecution by contacting the CBSA Investigations Division.
39. Determine if the goods are commercial and specified (i.e. alcohol, tobacco, weapons, drugs or child pornography) and the contravention is specified the Ministerial Directive (i.e. C19, 20, 25, 31, 66, 69, 203, 344, 345, 346 and 348).

Note: Refer to other chapters in Part 5 - Enforcement Actions - Goods, Documents, Evidence and Conveyances.

40. If the commercial goods and contravention are specified;
 - a) seize the goods as forfeit pursuant to subsection 110(1); and
 - b) any evidence related to the goods maybe seized pursuant to subsection 110(3).
41. If the goods or the contravention are not specified or the goods are not commercial, seize the goods as evidence pursuant to subsection 110(3).
42. Do not release goods and/or evidence seized pursuant to 110(3) until the CBSA Investigations Division determines their disposition in accordance with sections 114(3) and 115(2) of the *Customs Act*.
43. Complete any CBSA processes such as collecting duties and taxes, issuing penalties and releasing non-evidence goods.
44. Seize the evidence.
45. Complete form E352 Evidence Seizure Receipt.
46. Report the details of the evidence seized on form K19A Report of the Circumstances and Events.
<<http://infozone/english/r1713497/formpub/files/PDFFiles/K19A-02-e.pdf>>

Note: If the seizure of evidence is made in conjunction with another enforcement action (i.e. an administrative monetary penalty, a physical seizure of goods or an ascertained forfeiture), it is not necessary to complete form K19A since the details will already be documented in forms E650 - Notice of Penalty Assessment (NPA) or K19S Seizure Receipt. A copy of the applicable narrative report should be attached to form E352 and provided to the CBSA Investigations Division.

Documenting Seizures

47. If the case involves specified goods and contraventions, the goods should be seized as forfeit pursuant to section 110(1), documented on form K19S and any evidence related to the goods should be seized pursuant to 110(3) and documented on form E352.

48. If prosecution is warranted but the case does not involve goods and contraventions specified by ministerial directive, then the *goods* should be seized as evidence pursuant to 110(3) and documented on form E352.

Note: Refer to Part 5, Chapter 1, Commercial Seizures, Ascertained Forfeitures and Administrative Monetary Penalties for information on specified goods and contraventions.

49. Goods and/or evidence seized pursuant to 110(3) are not to be released until the CBSA Investigations Division determines their disposition in accordance with sections 114(3) and 115(2) of the *Customs Act*.

50. In most cases where the CBSA Investigations Division considers prosecuting, investigators will respond to the CBSA office in person and seize the evidence. However, in some regions or on some occasions, the CBSA Investigations Division will ask officers to seize the evidence.

51. For narcotics related offences, evidence need not be documented on form E352. Form HC/SC 3515, Drug Offence and Disposition Report, should be used for such purposes. Form HC/SC 3515 also provides for the transfer of evidence to the police.

Note: Please refer to Part 2, Chapter 6, Drugs for more information on the procedures to be followed for drug seizures.

From E 352 Distribution

52. The form E352 is a four-part form. The distribution is as follows:

a) CBSA copy: to be forwarded to the Recourse Division;

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- b) Original copy and page 5: to be given to the person from whom the evidence was seized;
- c) Seizing Office copy: to be placed in seizure of evidence file; and
- d) Regional Investigations copy: to be given to the responding CBSA Investigator or forwarded to the Director of Investigations.

Disputes and Appeals of Evidence Seizures

- 53. Items seized as evidence pursuant to section 110(3) are generally seized for the purpose of affording evidence of the commission of a criminal offence. Since an individual might be charged with an offence as a result of the seizure of the evidence, the return and reporting provisions of section 114(2) and 114(3) of the *Customs Act* must be followed.
- 54. If the CBSA Investigations Division decides not to prosecute, the items seized as evidence pursuant to 110(3) would also be subject to the correction and review provisions of sections 127.1 and 129 of the *Customs Act* respectively.

Note: Refer to Part 5, Chapter 1, Commercial Seizures, Ascertained Forfeitures and Administrative Monetary Penalties for information on canceling a seizure.

- 55. If an individual wishes to dispute or appeal the seizure of evidence, the matter should be referred to the Director of Investigations in the region.
- 56. The Director of Investigations will then determine the appropriate course of action for each particular case.
- 57. If the investigation leads to criminal charges, the courts will decide on the disposition of the evidence.
- 58. The Director of Investigations will advise the appellant to file the appropriate documents with the courts.
- 59. If no charges are laid, the Director of Investigations can authorize the return of the evidence or if the evidence is required to support the civil actions taken, advise the appellant to appeal to the CBSA Recourse Division.

Return of Evidence

- 60. When anything is seized as evidence alone, it is not seized as forfeit.

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Note: Consequently, subsection 114(3) requires that anything seized as evidence alone is returned to the person or company from whom it was seized upon completion of all proceedings in which the thing(s) seized may be required.

61. The office that seized the evidence will be responsible for the actual return of seized evidence. This will be accomplished by sending a certified letter to the person or company concerned, offering the option of either:
 - a) having the thing(s) seized returned by registered mail; or
 - b) picking up the thing(s) seized at the CBSA office where the goods are located.
62. If there is no response to the letter after a period of 30 days from which it was sent, the thing(s) seized will be recorded as unclaimed goods and disposed of in accordance with the procedures outlined in Memorandum D4-1-6.
63. Should the certified letter be returned as undelivered, the address should be verified and the letter sent once again. Upon subsequent return or no response within 30 days, the procedures listed in the previous paragraph will apply.

Detention of Seized Records

64. Subsection 115(2) of the *Customs Act* requires that where any records, books or documents are seized as evidence they must not be detained for a period of more than 3 months from the date of seizure, unless, before that time:
 - a) the person from whom they were seized agrees to their further detention for a specified period of time;
 - b) a justice of the peace is satisfied that their further detention for a specified period is warranted and so orders; or
 - c) judicial proceedings are instituted (prosecution) in which the thing(s) seized may be required.
65. Normally, three months will be a sufficient length of time in which to determine if judicial proceedings are warranted or not.
66. At the end of 60 days from the date of seizure, all evidence seizures should be reviewed with the CBSA Investigations Division to determine if the evidence should be returned or not.

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- 67. When it is decided that evidence will not be returned, it will be the responsibility of the CBSA Investigations Division to obtain the extension.
- 68. When records, books or documents seized as evidence are to be returned, the procedures outlined previously for the return of evidence will be followed.

Copies of Records, Books or Documents

- 69. For most seizure actions involving goods and where it is believed that prosecution will not be undertaken, it is appropriate to copy the records, books or documents seized and return the originals to their owner.
- 70. Where only copies are kept, an E352 form will not be required.
- 71. Where the criteria of the prosecution policy has been met and it is believed that prosecution will be undertaken, the originals should be kept, a form E352 completed, and if necessary, copies of the original documents, etc., made for use by the person from whom the originals were seized.

Physical Evidence

- 72. Whenever undeclared or prohibited goods are found, they are to be considered as potential evidence.
- 73. Officers are to ensure that other persons, including CBSA personnel not involved with the seizure, do not arbitrarily handle the goods they seize.
- 74. As soon as undeclared or prohibited goods are found, they should be taken into the custody of the officer and removed from the importer's possession.

Note: This is the beginning of the chain of custody.

- 75. The goods should then be placed in a secure area away from the importer or other persons, but within the view and control of the officer.
- 76. When it is determined that the goods may be used as evidence, the goods should be marked or labeled showing the date, time, initials of the seizing officer and exhibit number.
- 77. Where an officer assists another officer in a search, it would be appropriate to have the assisting officer do the marking, but the seizing officer must also initial the evidence.

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Note: Only goods that will not be returned to the importer should be physically marked, i.e., cloth wrapped narcotics. Evidence bags and labels are available for all seized goods. Narcotics should always be placed in evidence bags as well as being physical marked.

78. Once evidence, which would warrant arrest, has been discovered, the subject is to be immediately placed under arrest, advised of the right to counsel without delay and cautioned concerning the making of statements.

Note: This is to be done even if the search has not been completed.

79. When the arrested traveller elects to contact counsel and this necessitates removing the traveller from the secondary area, the seizing officer is to maintain continuous possession of the seized goods or must have another officer remain with the goods.

Note: When an assisting officer watches over goods or evidence for another officer, that person becomes part of the chain of custody and could be called as a witness in any subsequent court proceedings where the continuity of evidence becomes an issue. In anticipation of such proceedings, the seizing officer should record the assisting officer's participation so that it becomes part of the history of the chain of custody.

80. Any goods or evidence remaining in the CBSA's possession are to be labeled and marked using the CBSA identification labels and/or evidence bags.
81. The identification labels are used to mark and identify all seized, detained or abandoned goods or evidence that are too large to be placed in evidence bags.
82. The label should be completed prior to being applied to the goods or evidence, with a cross reference to the applicable enforcement action number K19S, K19, E650 or K24, the date and time of the seizure, NPA or detention, the CBSA office number and the officer's initials.
83. The label should then be applied directly to the goods or evidence in a conspicuous area prior to storage.
84. When it appears that the goods or evidence could be damaged by the label's gum adhesive, pre-punched labels should be attached to the goods using a wire or string.
85. Evidence bags are available in two sizes and are used for items that may be handled frequently and used as court exhibits.

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86. The larger bags are used for items such as firearms, pornography, documents, etc., while the smaller bags are used for items such as drugs and jewellery.
87. The seizing officer should complete the label portion of the bag before it is sealed.
88. After the waxed backing has been peeled off, the label may be folded over and used to seal the bag.
89. Once sealed, the bag becomes tamper proof as the labels are pressure sensitive and will tear with any attempt at opening.
90. Once marked and identified, seized goods should be placed in the CBSA office safe or the bond room until required, released, or disposed.

Transferring Evidence

91. The *Customs Act* contravention takes precedence and should result in a seizure of the goods under section 110 of the *Customs Act*.
92. The CBSA Investigations Division is to be contacted for matters that are ordinarily referred to them before informing the RCMP of other statute offences that may have been contravened.

Note: This should be done in order to determine if the CBSA Investigations Division is interested in taking the CBSA portion of the case and whether they are interested in taking custody of the goods as “evidence” of the *Customs Act* contravention.

93. Where the CBSA Investigations Division declines the case or does not wish to take custody of the goods, the RCMP may be contacted via the RIO or as per established lines of communications.
94. Where the CBSA Investigations Division takes the case and custody of the goods, the RCMP are to be informed of the other statute offence via the RIO (or established lines of communication) and the location/status of the goods.
95. When the CBSA Investigator notes an offence of another Act of Parliament involving goods imported into Canada during the course of an investigation into a *Customs Act* matter, the RCMP is to be notified of the offence by the CBSA Investigations Division.

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96. When the RCMP are so notified, the Intelligence and Contraband manager of the region is to be informed that such matter has been referred to the RCMP and what, if any, action is being taken by the RCMP.
97. Whenever it is necessary to transfer evidence to another location or law enforcement agency, it is essential that the chain of custody remain unbroken.
98. In order to transfer the evidence to another location (including the CBSA Investigations Division) form K129 *Exhibit Control* must also be completed (in addition to forms K19 or E352).
99. Form K129 is to be endorsed to indicate that the goods must be returned to the CBSA at the conclusion of the court proceedings.

Note: When an agency other than the CBSA proceeds with the prosecution and the goods or documents required as evidence are not already seized or abandoned pursuant to the *Customs Act*, the other agency must seize the exhibits themselves using the appropriate legal authorities and forms. Form K129 is only an exhibit control form. It does not provide the CBSA or any other agency with the authority to seize exhibits.

100. The person or officer taking possession of the goods must sign for receipt of the goods on form K129.
101. The original copy of the signed receipt should then be placed on the seizure file.
102. When the goods are contained in an evidence bag, the receiving officer should indicate on the receipt the condition of the seal when received (e.g., "Seal intact").
103. When seized goods are returned, the above process is to be reversed.
104. The seized goods will normally be returned in a new envelope or evidence bag, along with the evidence bag originally used by the CBSA.
105. The envelope or other agency evidence bag should then be placed in a new CBSA evidence bag, and sealed by the officer.
106. It is not necessary to break the seal of the other agency bag if the goods are visible.
107. All used envelopes or evidence bags should be retained, either with the goods or on file, to prove chain of custody.

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108. When evidence is introduced into court, officers should be aware that they might be called upon to verify the chain of custody of the evidence.
109. This may involve the court appearance of each person who has had the opportunity to come into contact with the goods.
110. If defence counsel can establish for the courts that the chain of custody was broken, they may be able to create doubt as to the authenticity of the goods and may argue that the goods presented in evidence are not the same as those seized. In such instances, the evidence may be found inadmissible.
111. Civil penalties (seizures, ascertained forfeitures and NPAs) are separate and distinct actions from a criminal prosecution. If the courts acquit the individual, the civil penalties are not automatically overturned.
112. Officers should consult with the CBSA Investigations Division and/or the CBSA Adjudications Division prior to releasing any seized goods upon the completion of a prosecution.
113. Where the Court orders the goods to be confiscated or returned to the individual from whom they were seized, the CBSA Investigations Division must immediately notify the CBSA Adjudications Division, prepare a report, and submit it shortly thereafter.
114. In all cases, the relevant CBSA forms (E650, E352, K19S, K19, K24, K27 K129, etc.) are to be cross-referred to create an audit trail.

Statements

115. All peace officers and persons in authority must provide the subject with a warning or “caution”, concerning the uttering of statements. While there is no court prescribed wording for this caution, the CBSA has adopted the following wording:

“You are not obliged to say anything. You have nothing to hope from any promise of favour, or nothing to fear from any threat, whether or not you do say anything. Anything you do say, may be used in evidence.”
116. This caution is to be given to all persons as soon as an arrest is made or immediately following a spontaneous admission by the person that an offence has been committed.

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Note: For example, a traveller is sent to secondary for a mandatory examination. Prior to opening his luggage, the traveller makes a statement to the officer to the effect that he is carrying narcotics although physical evidence has not yet been uncovered. Depending on the circumstances, the traveller should be cautioned prior to further statements being made.

117. Once an arrest is made, if the person has already spoken with other officers or has made admissions, it should be made clear to the arrested person that there is no requirement to make further statements merely because another officer has entered the interview/search room or has attended nearby.

Note: This is done so the person cannot claim that there was inducement to make a statement by the very presence of another officer.

118. Each officer who enters the area must provide the subject with a secondary caution. The wording of this caution is as follows:

“If you have spoken to any customs officer, police officer or to anyone with authority, or if any such person has spoken to you in connection with this case, I want it clearly understood that I do not want it to influence you in making any statement.”

119. It is vital that following either caution the accused be asked whether the caution was understood. The answer to this question must be recorded in the officer's notebook.

120. If the accused does not understand, paraphrase the caution so that it is understood and record in the officer's notebook the wording of the paraphrased caution.

121. If there appears to be a language problem, the services of an interpreter should be employed where possible.

122. It is important that following either caution, officers make it a practice to automatically record in their notebooks the actual time at which the caution was provided.

Note: When dealing with “young persons”, officers must provide the caution in words that are appropriate to the age and understanding of the young person.

Note: Please refer to Part 6, Chapter 3, Arrest and Detention of a Young Person for further details.

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123. Whenever an accused does say anything to an officer, notes of what was said should be made in the officer's notebook as soon thereafter as possible.

Note: These notes should record the person's comments *verbatim*.

Taking Formal Statements

124. In most cases, CBSA investigators, RIO's or the police will interview the subject and take their formal statements.
125. There may be occasions when officers will be required to conduct the interview.
126. If the person requests the presence of legal counsel during the interview and counsel agrees to attend, this request should be accommodated and the interview deferred until such time as counsel arrives.
- Note: When obtaining a written statement, form E368 should be used. Refer to Appendix B for a copy of form E368.
127. It should be noted that the decision to conduct or delay the interview should not preclude the completion of formalities relating to the seizure or the issuance of the Notice of Penalty Assessment.
128. CBSA officers should secure all information and physical or documentary evidence relating to the goods and the offences.
129. Details such as the full name and mailing address of the subject and company concerned, the person's date of birth and other basic information taken from a driver's licence or passport, should be recorded in the officer's notebook. In the absence of these details, it may be difficult to issue a summons if charges are laid.
130. All interviews should be conducted in private with two officers present when and if possible.
131. Whenever possible, at least one of the officers should be the same sex as the person interviewed.
132. Access to the interview room should be limited to only those persons involved in the interview or statement taking.

Note: All persons who have had access or who have communicated directly or indirectly with the person during the interview may be called as witnesses.

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133. If the person wishes to have his or her counsel present during the interview, this should be allowed although there is no legal requirement to do so.
134. If counsel has not attended at the CBSA office by the time the interview is to be conducted, there is no requirement to wait for counsel.
135. Prior to taking a statement, the subject should be made as comfortable as possible.
136. Officers should allow the person to use the washroom or to have a drink of water if safe to do so.
137. Once the interview is under way, no interruptions should be permitted unless they are of an urgent nature. Use of discretion is recommended.
138. The narrative form of statement is preferable. The person should be provided with a sheet of paper and a pen and asked to record in his or her own handwriting the circumstances of the offence.
139. A narrative statement written by the accused is not always obtainable. In such instances, a statement may be obtained using questions and answers duly recorded by the questioning officer.

Note: All questions and answers should be recorded verbatim. It is not advisable to paraphrase as this may affect the validity of any statement.

140. When two officers are working together in the taking of a statement, one officer should do the questioning and recording, while the other officer should make observations and record details.

Note: For example, the observer should note the appearance and dress of the person, his location in the room, his bearing and demeanour, whether the person is nervous or calm, etc.

141. Officers should note in their notebooks all the steps of the interview, including any interruptions. Times should also be noted for all steps.
142. Although an accused may have been previously cautioned, a second caution should again be provided at the beginning of the interview.

Note: It is advisable to write this warning into the statement including the words "Do you understand?". The accused should then be asked to sign beside his answer.

Note: CBSA Statement forms E368 and E368-1 contain the warning in the forms.

143. In obtaining a statement from an accused person, every effort should be made to avoid leading or suggestive questions.
144. When the accused makes a voluntary statement of explanation, be it denial or admission, there should be no interruptions until such statement is finished.
145. Persons making a voluntary statement must not be cross-examined concerning the statement and no questions should be asked about it, except for the purpose of clarifying any ambiguity, i.e., to clear up certain points or to establish times.
146. When a statement is complete, it should be read out loud and the subject should be given an opportunity to amend or correct the statement in the person's own handwriting.
147. They should then be asked to sign the statement at the end of the last paragraph and to initial any changes.

Note: It is not absolutely necessary that the statement be signed.
148. The recording and observing officers must both sign the statement as well as the bottom of each page. Each page of the statement should also be numbered " page ____ of ____".

Statements from Young Persons

149. The taking of statements from young persons is strictly governed. The provisions relating to statements are found in section 146 of the *Youth Criminal Justice Act*. If these provisions are not complied with, then the statement may not be admitted.
150. The following steps must occur before a young person makes a voluntary statement:
 - a) the person to whom the statement is to be made must caution the young person that he or she has the right to consult counsel and a parent or other appropriate adult;
 - b) the person to whom the statement is to be made must caution the young person that any statement he or she makes must be made in the presence of counsel, a parent or other appropriate adult, unless the young person desires otherwise;

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- c) the young person must be given a reasonable opportunity to consult with counsel, a parent or other appropriate adult; and
- d) if consultation with counsel, a parent or other adult occurs, the young person must be given a reasonable opportunity to give the statement in the presence of the person with whom he or she has consulted.

REFERENCES

151. *Customs Act*
Criminal Code
Youth Criminal Justice Act
CBSA Investigators Training Course
Canadian Charter of Rights and Freedoms
Investigations Manual

Part 9

INVESTIGATIONS AND CRIMINAL PROCEEDINGS

Chapter 3

EVIDENCE AND STATEMENTS

APPENDIX A

STATEMENTS AND CONFESSIONS CHECK LIST

27/04/05

STATEMENTS AND CONFESSIONS CHECK LIST

During a Personal Search or Baggage/Conveyance Examination

1. Questions may be asked of any person associated with any goods, during a personal search or a baggage/vehicle examination, to ascertain the lawful status of the goods in question.
2. If a person makes a spontaneous inculpatory statements concerning any goods in their possession, and it becomes apparent that they may be arrested as a result of it (e.g., the person states that they have narcotics or undeclared restricted or prohibited firearms in their possession), they should be cautioned immediately thereafter concerning any further statements.
3. As soon as evidence has been obtained which provides reasonable grounds to arrest a person (e.g., narcotics or undeclared prohibited or restricted firearms are found), the person must be formally arrested, advised of the right to counsel and warned concerning statements.

After an Arrest Has Been Made

4. Once an arrest is made, the subject must be advised of the right to retain and instruct counsel and cautioned concerning statements. The caution should be read to the subject whenever possible, however in certain instances it may be read by the subject. In either case, it must always be confirmed that the caution is understood. Any language difficulties must be clarified and an interpreter summoned if necessary.
5. The physical and emotional state of the subject should be noted. If the subject is under the influence of drugs or alcohol, any statement obtained may not be admissible, however, this should not preclude an attempt to obtain one. In these circumstances, the taking of a statement should be delayed if possible.
6. Once the form that the statement will take has been determined (narrative or question/answer), the subject should be asked if he wishes to write his own statement.
7. All questions and answers must be recorded. Questions must not be in the form of a cross-examination (avoid making accusations, etc.). If after warning the subject, there is an unwillingness to say anything further, questioning should cease.
8. Any interruptions occurring during a statement should be noted and recorded.

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Evidence and Statements

APPENDIX A

9. Never lie to, promise, or threaten a subject in any manner. Any questions asked by the subject should be responded to politely and to the best of the officer's ability. If you do not know the answer to a question, say that you do not know.

After the Statement Has Been Taken

10. Have the statement read by the subject in a loud voice. If this is refused, read the statement to the individual.
11. Have any changes that are required (e.g., when the subject wishes to make a correction to what has been recorded) made by the subject and initialed. These changes may be made by the officer if necessary, but should be initialed by the subject. The part(s) to be corrected must never be obliterated but simply ruled out.
12. Do not pressure or coerce the subject into signing the statement. An unsigned statement will have more chance of admission as evidence than one in which the signature has been forced.
13. If a copy of the statement is given to any other person or agency, ensure that the original is retained for the file. An evidence bag may be used to store the document but it is not necessary to do so.

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INVESTIGATIONS AND CRIMINAL PROCEEDINGS

Chapter 3

EVIDENCE AND STATEMENTS

APPENDIX B

**CANADA CUSTOMS VOLUNTARY
STATEMENT FORM**

27/04/05

CANADA CUSTOMS VOLUNTARY STATEMENT FORM

1. Form E 368 should be used whenever a statement is taken and it is intended that the statement will be used as evidence.
2. The form need not be typed, as it will not be possible to do so during the interview. Transcribing may be done at a later date; however, the handwritten copy is the one, which will be used as the exhibit. In this regard, the original must be completed in ink.
3. If it is necessary to make changes or corrections to the statement, these should be initialed by the subject. It is preferable to have the subject make changes in his own handwriting. The part(s) that is (are) changed or corrected must not be obliterated, but simply ruled out so that the original is still legible.
4. Care should be taken to ensure that the voluntary statement form is completed in full detail. The following points are important:
 - a) the pages must be numbered and the total number of pages comprising the statement noted;
 - b) the time that the interview commenced;
 - c) the time that the interview ended, i.e., when the complete statement has been read by the subject and all changes made;
 - d) the full name of the person giving the statement. Initials must not be used and surnames should be written in capital letters;
 - e) the current address of the person giving the statement. If the person has no fixed address a notation should be made indicating "no fixed address" or "care of.....";
 - f) the name of the city and the province in which the statement is taken;
 - g) the date;
 - h) the name of the officer who has provided the warning. In most instances, this will be the questioning/recording officer;
 - i) the title of the officer who has provided the warning;

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Evidence and Statements

APPENDIX B

- j) the answer given by the person from whom the statement is taken, as to whether or not the caution is understood. This should always be a “yes” for the statement to be admissible in court;

Note: If the person states that the warning has not been understood, it should be repeated and explained in other words. Always make a record of the explanation.

- k) the signature of the person who was cautioned; and
- l) the signature of the officer who provided the caution, and of the witnessing officer.

CUSTOMS ENFORCEMENT MANUAL

Part 9

INVESTIGATIONS AND CRIMINAL PROCEEDINGS

Chapter 4

COURT POLICY AND PROCEDURES

25/04/05

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to have CBSA officers attend court cases when required. CBSA investigators recommend prosecution of significant cases of fraud and smuggling under the *Customs Act*, *Excise Act*, *Export and Import Permits Act*, *United Nations Act*, *Tobacco Act* and *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*.

DEFINITIONS

2. Refer to Part 11 - Glossary.

AUTHORITIES

Customs Act

3. Section 160(1) states that every person who contravenes section 11, 12, 13, 15 or 16, subsection 20(1), section 31 or 40, subsection 43(2), 95(1) or (3), 103(3) or 107(2) or section 153, 155, 156, or 159.1 or commits an offence under section 159 or knowingly contravenes an order referred to in subsection 107(11):
 - a) is guilty of an offence punishable on summary conviction; or
 - b) is guilty of an indictable offence.
4. Subsection 160.1 states that every person who contravenes section 153.1 is guilty of an offence, and in addition to any penalty otherwise provided, is liable on summary conviction to a fine, imprisonment or both.
5. Section 161 states that every person who contravenes any of the provisions of the *Customs Act* not otherwise provided for in section 160 is guilty of an offence punishable on summary conviction.

PURPOSE AND SCOPE

6. The purpose of this chapter is to outline some of the usual procedures that may occur during the course of a typical trial. It should be noted, that a specific or generic procedure couldn't be established. The actual procedures followed, will differ from court to court.

BACKGROUND

7. Most charges laid under the *Customs Act* are tried by way of summary conviction before magistrates or judges, and the procedure is similar in all parts of Canada. In non-jury trials, judges or magistrates act as both judge and jury. They instruct themselves in the law and find a verdict on the facts. The general rules governing this procedure are contained in Part XXVII of the *Criminal Code*.
8. CBSA officers will often be called as witnesses for cases involving charges laid under the *Criminal Code*. These trials may involve the use of juries. Jury trials differ in that the judge instructs the jury in the law and the jury finds a verdict on the facts. Part XX of the *Criminal Code* contains provisions governing juries.

The Court Process

Swearing the Information

9. An arrest and a decision to prosecute are the preliminary steps in the lengthy process necessary to bring the matter before the court. All court proceedings commence with the swearing of an "Information", in writing, before a justice of the peace or a Provincial or Territorial Court Judge.
10. The information (*Criminal Code* Form 2) may be sworn by anyone who has reasonable grounds to believe that an accused committed an offence. For CBSA cases, usually a CBSA investigator or police officer will swear the information; however, in some cases such as assault, the aggrieved party may do so. The person who swears the information is called the informant.

The Subpoena

11. A subpoena is a court order requiring a person (other than an accused who receives a summons) to appear in court at a specified time in order to give evidence pertaining to the case that is before the court. CBSA officers served with a subpoena must attend court on the specified date, bring along any related materials (evidence) requested in the subpoena and remain until the case is over unless dismissed by the presiding judge. Although only one subpoena is issued, it remains in effect for the entire trial.

Note: Refer to Appendix B for the national procedures for testimony of CBSA officers testifying in foreign courts.

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Court Policy and Procedures

12. The CBSA does not usually issue subpoenas to its own officers, as they are required to attend court for *Customs Act* charges as part of their job description. CBSA investigators will usually contact CBSA officers for notes and will-says and will notify the officers of upcoming court cases.
13. Failure to obey a subpoena is considered to be contempt of court, which is a criminal offence.
14. Officers who receive a subpoena to testify in court must immediately notify their superintendents so that appropriate arrangements can be made.

Election of Trial

15. All offences that are not within the absolute jurisdiction of a particular court are known as “electable offences”. This means that the accused may elect to be tried by either a provincial or territorial court judge alone, by a Superior Court judge alone or with a jury.
16. Once an information or charge has been laid, the accused is brought before a justice of the peace or a provincial court judge. The charge against the accused will be read and the accused will be asked to elect a mode of trial, if the offence is one for which the option to elect is provided. If the accused elects to be tried by a higher court, no plea is taken by the provincial (territorial) court judge.
17. If the accused elects to be tried by a provincial court judge, the judge will endorse the election on the information, take the plea and then proceed with the trial or set a date for trial. In the case where the person is brought before a justice of the peace (who is without the power of a provincial or territorial court judge), a date for trial before a provincial court judge will be set.
18. When the matter proceeds by indictment and the accused has elected to be tried by a higher court, the provincial (territorial) court judge must hold a preliminary inquiry (preliminary hearing) to determine if there is sufficient evidence to proceed to trial. The preliminary inquiry may be held at the time of election but is usually set for a later date. The accused may, however, with the agreement of the prosecutor, waive the right to a preliminary inquiry and go directly to trial. CBSA officers are not normally required to attend at the election unless the Crown Attorney feels that the trial may proceed immediately after the election.

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Court Policy and Procedures

Preliminary Inquiry

19. A preliminary inquiry is not a trial but rather a hearing to determine if there is sufficient evidence to commit the accused for trial in a higher court. The onus on the Crown is to put before the court sufficient evidence upon which a reasonable jury, properly instructed, could convict the accused. It also serves to give the defence an opportunity to hear some of the Crown's evidence against the accused.
20. Since the Crown is not required to present its entire case at a preliminary inquiry, it is possible that not all Crown witnesses will be asked to attend at this stage. The defence may, if it chooses, call witnesses at the preliminary inquiry. Attending witnesses will be re-subpoenaed if a trial date is set and must return to court on that date.

Voir Dire

21. There will be occasions when, during testimony, it will be necessary to determine if a statement made by an accused can be introduced. At this point, the court will pause to hold a *voir dire*, which is commonly referred to as a "trial within a trial". It should be noted that a *voir dire* is not held to determine the text of a statement but, rather, to determine the voluntary nature of the statement given by the accused. Consequently, the judge will conduct the *voir dire* to hear the evidence in question.
22. In a jury trial, the jurors must leave the courtroom while the judge alone hears the evidence in question. If the judge decides to admit the evidence, it will be repeated for the jury once they return. If the judge rules against the admission of the evidence, the judge will recall the jury and the trial will continue without the evidence being presented to them. In the courtroom, the judge is the final authority on what evidence is admissible and what questions witnesses may be compelled to answer.

POLICY

23. Officers will prepare for court by completing accurate and detailed notes, by securing and preserving all evidence and by completing and submitting all necessary CBSA and responding police agency required paperwork at the time of the incident.
24. Officers required to testify in court must immediately notify their superintendent so that appropriate arrangements can be made.
25. CBSA investigations will be the liaison with the Crown Counsel for *Customs Act* related court cases.

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Note: CBSA investigators will on some occasions set up a meeting with both the CBSA officers and the Crown in order to go over testimony prior any appearance in court.

26. CBSA court liaison officers will be the liaison with the Crown Counsel for Criminal Code related court cases.

Note: Court liaison officers will on some occasions set up a meeting with both the CBSA officers and the Crown in order to go over testimony prior any appearance in court.

27. Officers attending court will be well groomed and may wear the full, standard uniform with a shirt and tie or proper business attire. Regional policies may apply.

Note: Refer to the Customs Uniform Handbook for further information.

28. Officers will review their notebook, all evidence and court procedures before attending court.
29. Officers should review the charges laid and contents of the information.
30. Officers will arrive early for court with their notebook and all the case evidence in their possession and be prepared to answer to the Crown.
31. CBSA investigators will be in control of case evidence in most *Customs Act* related court cases and as such should arrive early for court with all the case evidence in their possession.
32. Designated Officers must carry their Designation Card with them while attending court for *Criminal Code* related court cases.
33. Officer's court deportment must be above reproach at all times.

ROLES AND RESPONSIBILITIES

CBSA Officers

34. CBSA officers are responsible for:
 - a) adhering to the policy and procedures set out in this chapter;

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Court Policy and Procedures

- b) enforcing the *Customs Act*, *Criminal Code* and other federal statutes in accordance with legislative requirements, established policies, and standard operating procedures;
- c) recording and maintaining detailed notes of an occurrence in the issued Customs Notebook (CE 1) and preparing the necessary documentation for further investigation and prosecution;
- d) being prepared to testify in court;
- e) acting in a professional manner while attending court;
- f) ensuring their attendance in court when required; and
- g) bringing their notebooks and all evidence in their possession to court.

Court Liaison Officers

35. Court liaison officers are responsible for:

- a) informing local management and involved officers of upcoming court dates, which they will be expected to attend;
- b) providing guidance to CBSA personnel with regards to court preparation requirements regarding *Criminal Code* offences;
- c) attending court cases when available to gain familiarity with the court process and to assist in the debriefing of court cases;
- d) liaising with court officers of the responding police agency and/or court Crown to obtain court rulings of all *Criminal Code* cases;
- e) liaising with CBSA investigators when necessary;
- f) informing officers involved in court cases how the case proceeded and when possible, providing feedback and suggestions to them;
- g) providing court transcripts of any unusual court cases that could affect the Officer Powers program or training and reporting these to the regional Officer Powers training unit;
- h) updating officers on the status/results of their court cases; and
- i) identifying local trends in court results for *Criminal Code* offences and reporting these to the regional Officer Powers training unit.

CBSA Superintendents

36. CBSA superintendents are responsible for:

- a) ensuring officers are notified of any subpoenas received at the CBSA office that are not provided directly to the officer;
- b) ensuring officers are scheduled the time needed to attend court when required;
- c) ensuring CBSA personnel abide by the policy and procedures set out in this chapter;
- d) recording and maintaining detailed notes of an occurrence in the issued Customs Notebook (CE 1) and preparing the necessary documentation for further investigation and prosecution;
- e) being prepared to testify in court;
- f) acting in a professional manner while attending court;
- g) ensuring their attendance in court when required; and
- h) taking appropriate corrective action on any breaches of this policy.

CBSA Investigators

37. CBSA investigators are responsible for:

- a) liaising with the Crown on all *Customs Act* related charges;
- b) providing assistance in court to the Crown when requested by the Crown;
- c) bringing all evidence in their possession to court;
- d) liaising with CBSA officers regarding court cases and procedures;
- e) liaising with court liaison officers when necessary;
- f) being prepared to testify in court;
- g) acting in a professional manner while attending court;
- h) ensuring attendance in court when required;

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Court Policy and Procedures

- i) identifying local trends in court results reporting to local CBSA management;
- j) debriefing officers on court cases, providing feedback and suggestions; and
- k) providing guidance to personnel about court preparation issues.

The Enforcement Branch

38. The Enforcement Branch is responsible for:

- a) developing, modifying, and approving policies in accordance with court jurisprudence;
- b) monitoring adherence with this policy and procedures by the regions;
- c) providing guidance to the field regarding courtroom policy and procedures; and
- d) developing, modifying and delivering training as required.

TRIAL PROCEDURES

39. At the beginning of either a trial or a preliminary inquiry, the judge (usually at the request of the defence) may make an order for the “Exclusion of Witnesses”, requesting that all witnesses leave the courtroom.

Note: This is done so that each witness gives testimony, without being influenced by the testimony of other witnesses.

40. After the order is made, all witnesses must leave the courtroom until they are called to testify. In this respect, the court will order witnesses to not discuss their testimony with one another.

41. The accused is not subject to this exclusion rule. The accused will be permitted to stay in the courtroom and can still testify as a witness.

42. While outside the courtroom or anywhere in the courthouse, do not talk about the case, your testimony or someone else’s testimony.

Note: All Agency witnesses should be very careful as to what they say and how they act. Friends and family of the accused and aides to attorneys may also be in the halls or other locations, and will report on your behaviour to the Defence Attorney.

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Court Policy and Procedures

43. Do not talk to any of the witnesses who testified prior to you as they leave the courtroom.

Note: Any such conversation would be brought up by the Defence on cross-examination and could seriously harm the case.

44. The Crown may request that the CBSA investigator in charge of the case be allowed to remain in the courtroom to assist the Crown with the evidence and with any clarification on customs issues that may arise. The judge will rule on this issue.
45. Evidence in court is based on sworn testimony. When called to the stand, a witness is asked to take an oath and swear to the truth of the evidence they are about to give on a Bible.
46. If officers prefer not to swear on the bible, the law allows the witness to make an affirmation of truth or take an oath in some other form.

Note: If the witness wants to take an alternate form of oath, the clerk of the court should be notified a few days before the trial.

47. The most common form of oath is:

“Do you swear that the evidence you are about to give the court in this case shall be the truth, the whole truth, and nothing but the truth, so help you God?”

48. CBSA officers testify as a witness for the Crown. The Crown Counsel will begin the questioning. This is called the “examination in chief”.
49. When the Crown has completed the questioning, the defence counsel will then begin the “cross-examination”.
50. There will also be occasions when the Crown will ask more questions after the defence questioning is completed or the Crown will re-address issues raised by the defence. This is referred to as the “re-examination” or “re-direct”.

TESTIMONY

51. When giving testimony, always pay attention to the questions that are asked of you and ensure that you understand them prior to responding

Note: If you do not understand a question, politely ask the magistrate or judge for it to be explained or to be re-phrased. It may be possible that you do not know the answer or are unable to remember or recall the specifics. Simply state "I do not recall" or I do not know the answer.

52. Professionalism must be displayed on the witness stand while testifying. A CBSA officer's behaviour is directly related to establishing the credibility of the testimony.
53. The defence may continually ask the same question in an attempt to provoke the witness or to change their testimony. It is imperative that CBSA officers remain professional in their answers and demeanour.
54. If this line of questioning becomes abusive, it is up to the Crown to object, not the witness.
55. When answering questions, CBSA officers should answer them objectively without bias.

Note: Do not attempt to emphasize the incriminating evidence against the accused. Witnesses are frequently accused of being biased by attempting to conceal favourable evidence that might help to acquit the accused. Witnesses enhance their credibility by properly giving both sides of the story (i.e., the complete facts as they are recalled).

56. Speak slowly and distinctly when testifying.
57. Never attempt humour while testifying.
58. There may be occasions when evidence in an officer's testimony, such as statements made by the accused, may be considered inappropriate in a courtroom. Before giving such evidence, ask for the judge's permission. If you are directed to repeat the statement, do so without hesitation. The judge may instruct you to write the evidence for the court instead of repeating it aloud.
59. Prior to attending court, an officer should section off their notes with a paper clip or elastic bands to make it easier to locate the pertinent notes related to the event.

Note: Refer to Part 8, Chapter 1, Notebooks for detailed information regarding notebooks.

60. It is a common occurrence in court for CBSA officers to use their notebooks to refresh their memory while testifying. This is, however, a privilege and a witness must request the court's permission prior to referring to notes.

61. Usually, the request is worded as follows:
 “Your Honour, may I refresh my memory from my notes, which were made by me on or about the time of the incident?”
62. A defence attorney has the legal right to study the notes to which an officer will refer. There have also been occasions when an officer's notebook has been put on record and identified as an exhibit. Again, it is important for the officer to ensure that other irrelevant confidential notes in the book are sectioned off by using elastics, paper clips or staples.

COURTROOM CONDUCT

The following are certain rules of protocol that must be followed in the courtroom.

63. When a judge or justice of the peace enters or leaves the court, everyone present is required to stand.
64. When an officer enters or leaves the courtroom, it is proper to bow or nod to the judge.
65. An officer should try to avoid entering or leaving the courtroom when there is a witness testifying.
66. When giving evidence refer to:
 - a) a justice of the peace in Provincial Court as “Your Worship”,
 - b) a judge in Provincial, County or District Court as “Your Honour”,
 - c) a judge in Supreme Court as “My Lord” or “My Lady”.
67. If you cannot remember the title, refer to the person as “Sir” or “Ma'am”.
68. The decorum of the court should be respected at all times and the CBSA officer should avoid leaning on the witness stand and on the judge's bench.
69. Hands should never be put in trousers or jacket pockets.
70. Eating or chewing gum in the courtroom is not allowed.
71. All cell phones, pagers, etc. must be turned off or put on silent or vibrate mode while in court.

Note: Never use a cell phone, pager etc, in the courtroom.

72. A professional appearance while testifying in court is crucial to the acceptance of the individual's testimony by both judge and jury.
73. The information and procedures given in this chapter are general in nature only. They are subject to provincial and regional variation.

Note: For specific concerns on procedures, or anything in respect to the particular case, CBSA officers are encouraged to discuss their concerns with the CBSA investigator or prosecuting officer handling that particular case. If it is necessary to speak to the Crown Counsel, the CBSA investigator or prosecuting officer will contact the Crown Counsel to arrange a meeting.

REFERENCES

74. *Customs Act*
Criminal Code
Canadian Charter of Rights and Freedoms
Canada Evidence Act
CBSA Investigator Training Course

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OUTLINE OF A TYPICAL CUSTOMS TRIAL

25/04/05

OUTLINE OF A TYPICAL CUSTOMS TRIAL

Motions – Any defence motions, or *Charter* challenges will usually be dealt with prior to trial to expedite court proceedings. Rather than stop and start the trial to deal with motions, they will frequently be dealt with before the main trial commences.

1. Introduction of counsel, reading of the Information (charges) and identification of accused.
2. Any amendments that are required to the Information are made at the start of the trial. Generally, the numbers and dates on an Information can be changed without successful challenge by the defence.
3. The court clerk reads the charges into the court records. If a plea (guilty/not guilty) has not already been entered, it is taken at this time.
4. The Crown and the Defence counsels make opening statements outlining their case. Defence counsel may wait until the start of their case to give their opening statement.
5. Any agreed statement of facts as well as the admission of agreed evidence is entered.

Note: An agreed statement of facts will be negotiated between Crown and Defence counsels along with the presiding judge to speed up the trial process. Any evidence that illustrates *mens rea* will not likely be included in the agreed statement of facts, as evidence entered by this method is no longer in dispute and cannot be re-addressed.

6. In CBSA cases, the Crown may introduce affidavit evidence, such as:
 - a) customs declarations, GST returns etc.;
 - b) affidavit from CBSA Collections stating that the relevant duties and taxes were not paid prior to the start of the investigation;
 - c) bank records introduced by affidavit;
 - d) Certificates of Incorporation for companies; and
 - e) business records pursuant to section 30 of the *Canada Evidence Act*.

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7. Search and seizure documents (information to obtain a warrant, warrants and retention orders, customs seizure notices) are introduced into evidence. The CBSA must prove to the court that it is in legal possession of the documents that will be used as evidence and that the CBSA has maintained legal possession since the time of seizure.
8. An order for the exclusion of all prosecution and defence witnesses is frequently given. Witnesses must remain outside the courtroom until after they have testified.
9. The Crown enters its evidence first.
10. For each Crown witness, the following order of questioning will take place:
 - a) Direct examination by the Prosecutor;
 - b) Cross-examination by the Defence lawyer;
 - c) Re-Direct examination by the Prosecutor. This is restricted to obtaining explanations of certain answers given by the witness, or to clarifying apparent inconsistencies in the testimony of the witness during cross-examination. No new areas of evidence may be brought up during the re-direct; and
 - d) Re-Cross examination by Defence. The Defence may be allowed to re-cross with regard to areas covered in the re-direct.
11. In most cases, the CBSA investigator (or police officer) in charge of the case will appear as the first witness to introduce the seized records and exhibits into evidence, as this evidence may be required in the testimony of other witnesses. The investigator in charge of the case will then step down and may be recalled later, normally as the last witness.
12. Should the investigator in charge of the case be allowed to stay in the court room to assist the Crown, the investigator would do the following:
 - a) maintain exhibits - keep Crown exhibits in order, and note numbers of Defence exhibits;
 - b) ensure that all supplies/equipment required are available, and fully functioning. (i.e.: visual aids, tape recorder, laptop);
 - c) take notes of testimony, and alert Crown counsel of areas of concern; and

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- d) manage witnesses - if there are a small number of Crown witnesses, the investigator could look after them but if there are many witnesses, another staff member would be appointed to look after the witnesses.
13. The Crown witnesses are called in the order determined in pre-trial meetings to present their evidence/testimony.
14. The investigator may be called to testify as the last witness to tie up any loose ends and then the Crown closes its case.
15. A "No Evidence" motion can be entered at this point.
16. The Defence will present its case. For each Defence witness, the order of questioning the witnesses in paragraph 10 will be reversed. Direct examination is by the Defence. The accused does not have to testify, and his or her failure to do so shall not be made the subject of comment by the Judge, or by counsel for the Prosecution, (*Canada Evidence Act* (Sec. 4(6))).
17. After the Defence has presented its case, the Crown is allowed to introduce rebuttal evidence. This evidence must be strictly confined to rebutting the defendant's case and must not merely confirm the Crown's case. Witnesses who have previously testified, including the investigator, may be recalled to testify, or a witness who is new to the trial may be called.
18. The Crown and Defence make their closing arguments. These must be confined to the evidence and issues in the case on trial. It is proper for them to state their views of the evidence, and to state the various inferences and conclusions, which they believe the judge should draw from the testimony and the evidence. In presenting closing arguments, if the Defence calls evidence, then its closing arguments are presented first.
19. The judge determines if the accused is guilty or not. For the judge to find the accused guilty, he or she must feel that the Crown has proven their case beyond a reasonable doubt.
20. If the accused is found guilty, the counsels will speak to sentence. This may take place at the same time as the plea is entered, or at a later court date.
21. The Judge pronounces sentence.

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NATIONAL PROCEDURE ON THE TESTIMONY OF CBSA OFFICERS IN FOREIGN COURT

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National Procedure on the Testimony of CBSA Officers in Foreign Court

1. Paragraph 107(5) of the *Customs Act* authorizes a customs officer to testify in a foreign court and disclose customs information. The *Customs Act* provides an officer with the authority to comply with a subpoena, warrant, or an order made by a court outside Canada, solely for the purposes of criminal proceedings.
2. It must be noted that there is no obligation on the part of any CBSA officer to comply with a subpoena, warrant or request/order from a foreign court. In the spirit of cooperation and support, it is recommended that the CBSA consider assisting the foreign request whenever possible.
3. The routing of such an order or request is to be made through the Mutual Legal Assistance Treaty (MLAT) process. The MLAT requires that the request be sent from the Justice Department of the requesting country to the Department of Justice Canada. For example, an MLAT request for testimony from the United States is channelled through the US Department of Justice, Office of International Affairs, Washington, DC to the International Assistance Group (IAG) in Ottawa.
4. All requests should be sent by the requesting country to the Minister's delegate at:
Justice Canada
International Assistance Group (IAG)
284 Wellington Street
Ottawa, ON K1A 0H8
Phone: (613) 957-4769
Fax: (613) 957-8412
5. Once the IAG has approved the request, it will be forwarded directly to the Enforcement Branch. The Enforcement Branch will review all pertinent information regarding the case to ensure that sensitive information will not be disclosed during the foreign proceedings. The Enforcement Branch will notify the region of the request and approval.
6. This process applies to countries with which Canada has a signed MLAT agreement; otherwise the request will be processed through diplomatic channels. Such diplomatic requests should be referred to the Enforcement Branch to assist the foreign government in this process.

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7. Urgent requests, where time does not permit for the diplomatic or MLAT processes, are to be sent directly to the Enforcement Branch. In addition, prior to the involvement of Justice Canada or the diplomatic process, the Enforcement Branch must be contacted to determine the most efficient manner of fulfilling the request for assistance. All requests regarding the above procedures will be directed to:

Director, Borders Intelligence
Enforcement Branch
Canada Border Services Agency
191 Laurier Avenue West, 18th Floor
Ottawa, ON, K1A 0L8
Phone: (613) 954-7575
Fax: (613) 952-0209

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CONTROLLED DELIVERIES

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Controlled Deliveries

Policy Statement

It is the policy of the CBSA to work collaboratively with other law enforcement agencies in support of the use of controlled deliveries to further the CBSA mandate.

Purpose: This section of the chapter sets out the requirements of the Canada Border Service Agency policy on Controlled Deliveries.

Definitions:

Refer to EN Manual – Glossary

Controlled Delivery: An investigative technique that permits the onward movement of contraband under the direction and control of a designated law enforcement agency.

Coordinating Manager: The Criminal Investigation Division (CID) or Regional Intelligence Manager who is responsible for coordinating the CBSA's participation in a Controlled Delivery operation. *This will be the first manager contacted by the field intelligence officer or investigator.*

Law Enforcement Agencies (LEA): the RCMP, a provincial or a municipal police force or a police officer thereof that is designated to undertake a criminal investigation under the Controlled Drugs and Substances Act and/or who can undertake a *Criminal Code of Canada* investigation with the designation under section 25.1 of the Criminal Code of Canada.

Policy

The following requirements apply to all CBSA personnel involved in Controlled Delivery activities.

1. In the case of commodities that fall under the CBSA mandate for criminal prosecution, CBSA participation in a Controlled Delivery is for the primary purposes of gathering evidence for CBSA prosecution and secondarily, for the purpose of collecting information for intelligence production.
2. In the case of substances falling under the *Controlled Drugs and Substances Act (CDSA)* or currency/monetary instruments under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)*, while the LEA is responsible for the investigation and criminal prosecution, CBSA liaison activities in relation to the Controlled Delivery is for the purpose of collecting information falling within CBSA's

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mandate in order to produce CBSA intelligence.

3. The Criminal Investigation Division (CID), Programs Branch is responsible for providing policy and procedural guidance within the CBSA on Controlled Delivery operations.
4. The extent of the CBSA's participation in a Controlled Delivery shall be determined on a case-by-case basis:
 - (i) by the CID Coordinating Manager for all cases except those identified in paragraph (ii);
 - (ii) by the Regional Intelligence Coordinating Manager in cases involving commodities falling under the CDSA and/or PCMLTFA; and
 - (iii) by the CID Coordinating Manager for cases involving all incidents where a combination of goods includes both CDSA/PCMLTFA and non-CDSA/PCMLTFA goods that contravene border legislation.
5. The CBSA may participate in a Controlled Delivery operation only under the direction and control of a public officer personally designated under s.25.1 of the Criminal Code of Canada.
6. In the case of a controlled substance included in the schedules of the *Controlled Drugs and Substances Act* (CDSA), the CBSA may participate in a Controlled Delivery operation only under the direction and control of the RCMP or an LEA designated in accordance with the Controlled Drugs and Substances Act – Police Enforcement Regulations (and as per paragraph 10 of this policy).
7. All CBSA personnel, including investigators, intelligence officers and port of entry personnel, involved in Controlled Delivery operations are to work collaboratively with each other and with foreign and domestic law enforcement agencies in support of Controlled Deliveries.
8. CBSA participation in a Controlled Delivery must be conducted in accordance with the legal authorities and mandate of the CBSA, the CBSA Code of Conduct and Health and Safety Policies, the Values and Ethics Code for the Public Service of Canada, and all other applicable legislation.
9. Except in operations where a CBSA enforcement action is intended, CBSA personnel shall not enter any premises or board any conveyance involved in the Controlled Delivery until they are assured that the area in question is safe and has been secured by the LEA leading the operation. In circumstances where a CBSA enforcement action is intended (i.e.: arrest, execution of a search warrant within CBSA mandate), the investigating officers initial participation is to be in accordance with the CBSA Policy on the Use of Force, including the sections dealing with

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“High-Risk Persons”.

10. At the request of the investigating LEA, the CBSA may assist and participate in LEA search warrant operations associated to a Controlled Delivery under the LEA's control and direction. The activities of CBSA personnel will at all times remain within the parameters of the search warrant to assist the LEA in the identification and seizure of the evidence listed in the warrant.
11. In Controlled Delivery operations which involve an intended CBSA enforcement action, CBSA personnel and personnel of the LEA leading the operation may participate in interviews of the suspects as part of the collaborative criminal investigation. The information, including the manner and authority under which the CBSA collected the information must be disclosed during any related court activity.
12. In Controlled Delivery operations which do not involve an intended CBSA enforcement action (i.e. involving CDSA substances), CBSA personnel may participate in interviews of the suspects only under the control and direction of the leading LEA. Authorization must be obtained from the LEA and limits to the scope of information collected implemented. The information, including the manner and authority under which the CBSA collected the information must be disclosed during any related court activity.
13. The information relating to seizures that result in Controlled Deliveries and information regarding Controlled Deliveries themselves is operationally sensitive and must be protected for the integrity of all CBSA/LEA operations as well as officer safety.
14. Depending on scenarios of paragraph 4, all CBSA officers involved in a Controlled Delivery must ensure that:
 - i) any information that may have evidentiary value is provided in a timely way to the lead investigative body, either CID or LEA partners;
 - ii) any information that may have intelligence value related to a matter under the CBSA's mandate is provided in a timely way to Intelligence Officers.
15. Controlled Delivery operational procedures (see below) must be interpreted in a manner consistent with CBSA legislative authorities. Written Collaborative Arrangements (WCA) between the CBSA and the LEA must be interpreted in a manner consistent with legislative authorities and this policy.

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Roles and Responsibilities

Border Services Officers

The CBSA BSO is responsible for:

16. ensuring the Superintendent is immediately made aware of significant interdictions;
- 17.
18. performing Integrated Border Query (IBQ) systems checks and providing results to the Investigator or Intelligence Officer when requested;
- 19.
- 20.
- 21.
- 22.
23. release all CBSA system holds on a shipment subject to a CBSA Drug Interdiction;
24. preparing an ORS report for Intelligence purposes with a copy being forwarded to the CID.

(See **Appendix A** for additional instructions)

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CBSA Superintendent

The Superintendent is responsible for:

25. contacting the appropriate regional program as per established regional contact principles when a contravention has been identified and prosecution and/or significant seizure thresholds are met;
26. ensure the proper and timely reporting and turning over of all information and items relevant to the Controlled Delivery to the investigator or LEA, in accordance with the policy on handling of evidence;
27. ensuring BSO's prepare an ORS report for Intelligence purposes with a copy being forwarded to the CID.

Investigator

The Investigator is responsible for:

28. being the first responder when commodities within paragraph 4. i) and iii) of the policy guidelines are seized;
29. providing guidance and advice to POE staff to ensure appropriate collection and handling of potential evidence;
30. being the primary point of contact and liaison concerning controlled deliveries when designated as such by the Coordinating Manager;
31. providing on-going information to BSO's and Intelligence for future interdiction purposes;
32. notifying the appropriate LEA of intercepts that may result in a possible investigation and coordinating information exchange with the LEA in relation to the controlled delivery when tasked to do so by the Coordinating Manager;
33. conducting any resulting investigation that falls within CBSA mandate;
34. preparing a written operational plan, based on the police operational plan as well as a risk assessment, and submitting it for approval to the Coordinating Manager. A verbal operational plan is only acceptable when the circumstances do not allow enough time for a written operational plan;

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35. participating in surveillance activities in accordance with the CBSA Surveillance Policy;
36. participating in the operational aspect of the controlled delivery, where appropriate, as part of the CBSA mandate, or when requested by a LEA, and approved by the Coordinating Manager;
37. after the search warrant stage and/or arrests have been made, participate with the LEA in the interviewing of subjects for the purpose of collecting evidence for prosecution, especially where CBSA is in a joint investigation or has the sole mandate to investigate;
38. ensuring timely provision of the results of the controlled delivery to Intelligence in order to ensure the ability to interdict future shipments, etc.;
39. depending on mandate (i.e., When CBSA is the partner and/or lead investigation agency) maintaining continuity of evidence and goods pertaining to potential for prosecution;
40. completing of all court / legal documents;
41. conducting and / or attending debriefing sessions related to the execution of search warrant phase of a controlled delivery.

Intelligence Officer

The Intelligence Officer (IO) is responsible for:

42. being the first responder when commodities within paragraph 4. ii) of the policy guidelines are seized;
43. being the primary point of contact and liaison concerning controlled deliveries when designated as such by the Coordinating Manager;
44. notifying the appropriate LEA of intercepts that may result in a possible investigation and coordinating information exchange with the LEA in relation to the controlled delivery when tasked to do so by the Coordinating Manager;
45. providing on-going information to BSO's for future interdiction purposes;
46. exchanging information in a timely manner with the lead LEA or CID investigator;

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47. providing existing intelligence that has relevance to the controlled delivery process, to the lead LEA or CID investigator when requested and appropriate, subject to security or safety issues and caveats;
48. preparing a written intelligence operational plan, based on the LEA operational plan, that includes a risk assessment, and submitting it for approval to the Coordinating Manager. A verbal operational plan is only acceptable when exigent circumstances do not allow enough time for a written operational plan;
49. analyzing controlled delivery data for tactical, operational and strategic purpose and advising Intelligence Development and Field Support, Headquarters of their findings;
50. participating in surveillance activities in relation to a controlled delivery operation when requested by the LEA or CID, and in accordance with the CBSA Surveillance Policy;
51. participating in the operational aspect of the controlled delivery when requested by a LEA, and approved by the Coordinating Manager;
52. after the search warrant stage and/or arrests have been made, observe and/or participate with the LEA in the interviewing of subject(s) for the purpose of collecting intelligence to further CBSA mandate;
53. conducting debriefing to POE staff and/or attending debriefing sessions related to the execution of search warrant (see section on debriefing sessions).

Intelligence Analyst

The Intelligence Analyst is responsible for:

54. analyzing controlled delivery data for tactical, operational and strategic intelligence purposes;
55. providing analytical intelligence and assessment of risk to the LEA or CID lead investigator depending on the case.

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Coordinating Manager

The Coordinating Manager is responsible for:

56. approving CBSA participation in a controlled delivery in accordance with the policy;
57. maintaining oversight of CBSA participation and monitoring the progress of the investigation using a controlled delivery;
58. negotiating costs incurred or to be absorbed regionally by the CBSA;
59. ensuring that the CBSA Controlled Delivery Policy and Procedures are followed;
60. briefing regional management teams in a timely manner of any on-going investigations where a controlled delivery will be used as an investigative technique and/or for the purpose of providing support if required;
61. notifying the Border Operation Center as soon as is practical of any on-going investigation, regardless of commodity, in which CBSA officers will participate in a controlled delivery for senior management briefing;
 - i. Information provided to the BOC must contain the following mandatory elements: CBSA contact name, who's involved (police force if any), region/city, when (date of controlled delivery), what is being investigated (link to CBSA mandate).
62. after the operation, provide controlled delivery operational plan, risk assessment report and debriefing report to the Criminal Investigation Division (Office of Primary Interest) at Headquarters for on-going policy development and maintenance.(e-mail: ci.ec@cbsa.gc.ca)

Regional Director level (Criminal Investigations and/ or Intelligence)

The Regional Director is responsible for:

63. ensuring that the coordinating manager follows the Controlled Delivery Policy;

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- 64. maintaining communication with the coordinating manager as per regional guidelines during the controlled delivery process and subsequent operations;
- 65. informing his or her counterpart from Criminal Investigations or Intelligence for the purpose of providing support if required, and keeping his or her counterpart informed of the progress of the operation.

Criminal Investigations Division, Programs Branch, Headquarters

The Criminal Investigations Division, HQ is responsible for:

- 66. developing and updating various policy documents, operating procedures and agreements relating to controlled deliveries in consultation with appropriate headquarters program areas, the regions and external partners;
- 67. providing policy advice and functional guidance on CD policy and activities;
- 68. advising and briefing senior management on controlled delivery if/when contentious issues arise;
- 69. receiving, reviewing and analyzing operational plans, risk assessments and debriefing reports to evaluate CBSA's participation in CD and for on-going policy development and maintenance;
- 70. capturing and analyzing controlled delivery statistics for annual reporting.

Intelligence Development and Field Support, Operations Branch, Headquarters

The Intelligence Development and Field Support, HQ is responsible for:

- 71. providing operational support (including that the collection of intelligence is aligned with the CBSA's priorities) to regional intelligence personnel based upon the functional advice and guidance provided by CID, Programs Branch, Headquarters;
- 72. capturing controlled delivery statistics in cooperation with CID for the purpose of analysis by the CBSA Intelligence Analysis Unit;
- 73.

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Procedures

74. The success of an investigation where a controlled delivery is utilized is reliant upon the timely referral, coordination, and execution of the controlled delivery and search warrant with law enforcement partners.
75. BSOs should always be conscious of the established regional contact principles, the thresholds in EN Manual Part 9, Chapter 1, paragraph 16, (Prosecution Policy) and/or regional thresholds established by the regional Criminal Investigations offices and/or Intelligence offices. In instances where the BSO encounters situations (i.e.: lower thresholds with aggravating factors) where they are unsure if a referral should be forwarded, the Superintendent should contact the appropriate local Criminal Investigation office or Intelligence Office to seek clarification.
76. Timely referrals to the CBSA CID or from Intelligence to another LEA for will provide an opportunity to review the lead and determine if an investigation will be initiated with or without a controlled delivery as an investigative technique.
77. The Coordinating Manager should consult with their Criminal Investigation / Intelligence colleague to determine if a controlled delivery will be considered as part of an investigation and the appropriate level of CBSA participation. The Coordinating Manager should consult / liaise internally and externally with any or all appropriate LEA prior to reaching his/her decision to initiate a criminal investigation or an intelligence investigation. A decision by one area to not actively participate does not preclude continued participation by the other area under the oversight of the Coordinating Manager.
78. The Coordinating Manager is required to ensure that CBSA's Criminal Investigations / Intelligence areas each have an opportunity to participate when it best serves the CBSA and/or the LEA to do so and that the participation is collaborative. The Coordinating Manager is responsible to guide and supervise all CBSA staff who are playing an active role in the operation.

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Debriefing Sessions

108. Debriefing sessions will be held after the search warrant phase of a controlled delivery where the CBSA CID is the lead (mandated) or shares the mandate (joint CBSA/ LEA mandate). All officers involved with the operation and an assigned Intelligence Officer or Intelligence Analyst will be invited to attend to discuss the operation and results.
109. Whether CBSA participated or not in the operation, the CBSA should request that the RCMP or lead LEA invite the appropriate CBSA

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representative to a subsequent debriefing session for two primary purposes:

- a) To identify information gathered that would have intelligence / evidence value for the CBSA's mandate and;
- b) To assess the CBSA practices and impact (positive or negative) on successful execution of the controlled delivery operation.

110. Information provided to the CBSA personnel during the debriefing sessions will be used to further the agency's mandates. Care will be taken not to disclose or interfere with the ongoing investigation.

111. No information from the on-going investigation will be shared with any other LEA without the proper written authorization from the lead investigator of the CDSA or CBSA investigation.

112. Information obtained in section 109.b) above as well the operational plan and risk assessment will be forwarded to CID HQ for analysis and for future policy maintenance/development.

Sharing of Information/evidence

113. Any evidence obtained during a controlled delivery operation and subsequent search warrant will be shared with the partner investigating LEA in accordance with existing Working Collaborative Arrangements, the CBSA Sharing of Information Policy including section 107 of the *Customs Act* as well as section 8 of the *Privacy Act*.

114. Any information that was originally obtained by CBSA as part of its border mandate may be shared in accordance with the CBSA Sharing of Information Policy including section 107 of the *Customs Act* and CBSA policies (D1-16 series).

Inter-Regional or Inter-Provincial Controlled Deliveries

115.

116.

117.

118.

International Assistance Request for Controlled Delivery

119. Any requests received by the CBSA for assistance with any controlled deliveries by any Foreign Law Enforcement Agency or Customs Agencies must be directed immediately to the Border Operation Center.
120. The RCMP will be the lead for all international assistance requests for a controlled delivery on Canadian soil. Any International Controlled Deliveries must be routed through an RCMP Liaison Officer located in the originating country. The Border Operation Center will advise the foreign agency to contact the RCMP Liaison Officer located at the Canadian Embassy in the originating country.
121. The RCMP Headquarters will be advised of the assistance request by their liaison officers and if the controlled delivery is authorized, the RCMP will inform our Agency regionally of the pending controlled delivery.

REFERENCES

CBSA/RCMP Joint Policy for Investigative Responsibilities for Enforcement of the *Customs Act*
CBSA/RCMP Working Collaboration Agreement on Drug Matters
Letter of Intent between CBSA/RCMP with respect to Criminal Investigations and the Laying of Charges under IRPA
Criminal Code
Customs Act
Controlled Drugs and Substances Act (CDSA)
CDSA-Police Enforcement Regulations

APPENDIX A

BSO Special Instructions

1. BSO's will familiarize themselves with the CBSA Enforcement Manual chapters that deal with the specific commodity or situation.
2. As well, to ensure that a Controlled Delivery has the greatest chance of success BSO's are to familiarize themselves with these supplementary instructions:

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3. Once a decision is taken by the LEA or CBSA CID to initiate an investigation and attempt a Controlled Delivery,

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Part 9

INVESTIGATIONS AND CRIMINAL PROCEEDINGS

Chapter 6

DISCLOSURE OF CBSA INFORMATION IN CRIMINAL PROCEEDINGS

21/03/2014

EN Part 9 Chapter 6 Disclosure of CBSA Information in Criminal Proceedings

INTRODUCTION

1. The Canada Border Services Agency (CBSA) plays an integral part in the interdiction, investigation and prosecution of those involved in trans-border crime.
2. In Canada, the prosecution and the investigating agency has a duty to disclose to the accused all relevant information in its possession or control that may assist in making a full answer and defence.
3. The term "Crown" within this chapter refers to Public Prosecution Service of Canada (PPSC) or the Provincial Crown.

POLICY STATEMENT

4. It is the policy of the CBSA that all officers will provide full and frank disclosure of all relevant information within CBSA's possession that relates to a criminal proceeding in accordance with the legal principles set out by the Courts.

AUTHORITY

5. Section 7 of the *Canadian Charter of Rights and Freedoms* (*Charter*) ensures that everyone has the right to life, liberty and security of person, and the right not to be deprived of these except in accordance with principles of fundamental justice.
6. Failure to provide full and frank disclosure could result in a violation of Section 7 and lead to an error in the administration of justice, potentially risking a stay of proceedings and/or civil liability.
7. As per *R v Stinchcombe*, [1991] 3 SCR 326, the Supreme Court has identified a constitutional requirement for Crown disclosure to the accused in criminal cases.

PURPOSE

8. The purpose of this chapter is to outline the principles of lawful disclosure and to ensure CBSA officers understand their responsibility with regards to the appropriate transfer of all relevant CBSA information to the lead officer in charge of the case or the CBSA court liaison officer and /or the Crown.

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DISCLOSURE PRINCIPLES

9. The joint goal and responsibility of the CBSA and the Crown is to have disclosure that is timely, organized and complete.
10. The underlying purpose of the duty to disclose is to prevent wrongful conviction of innocent persons.
11. The CBSA is required to turn over to the Crown prosecutor any **information in its possession or control that is relevant to a prosecution and defence** that may assist in making full answer and defense.
12. Certain information may be privileged and exempt from disclosure, however, the CBSA must still inform the Crown of the existence of this information.
13. Relevant information encompasses a broad range of material, even information which may have only “marginal value” to the ultimate issues at trial. Information is relevant if it can reasonably be used to:
 - meet the case for the prosecution;
 - advance a defence; or
 - make a decision which may affect the conduct of the defence, such as whether to call evidence.
14. There is a legal duty to disclose information that is both favourable and unfavourable (exculpatory and inculpatory) in nature.
15. The Crown’s obligation to disclose is a continuing one, and disclosure must be made with respect to additional information when it is received.
16. Examples of CBSA information that may be subject to disclosure includes, but are not limited to: officer notes (whether made in officer notebook or elsewhere), activity reports, evidence control logs, A44 reports, deportation orders, seizure reports, lookouts, audit/verification results, witness statements, video surveillance, traveller history, importation or exportation documentation, declaration forms, use of force reports, intelligence files, calibration documents for approved screening devices (ASD), copies of identification taken, witness lists, “Will Say” statements, and other relevant information to the proceedings.
17. Particular disclosure procedures can vary from one region to another as per regional Crown office practices. Please verify with your local Crown on specific disclosure package requirements.

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Disclosure of intelligence files

18. Intelligence files may include background information used to identify individuals or organizations to be investigated. A file could contain sensitive information from confidential sources, information that is not relevant to the charges before the court, or information about third parties – all factors that must be considered when undergoing the editing/vetting process (process explained further below).
19. Intelligence information, including information that is labelled “For Intelligence Purposes Only,” is subject to the same disclosure rules as any other information if it is relevant to the prosecution. It may, however, be exempted from disclosure depending on the type of the information and who saw or used it.
20. The CBSA must advise the Crown prosecutor about the existence of a file and its content (such as the source of information and what information might be relevant to the defence) and, if an exemption is available, request that the information not be disclosed.
21. The Crown will advise the defence of the existence of the file and the defence may make an application to the court for disclosure – if disclosure is ordered, the file will still undergo the editing/vetting process by the CBSA and the Crown.

Disclosure of Third Party information

22. Prosecutors are usually not required to disclose information in the possession or control of other government agencies, *unless*, the other agency has been significantly involved in the CBSA investigation or where the other agency can reasonably be expected to have relevant information. Where another agency has so been involved, it is considered to be part of the Crown’s case for disclosure purposes; for example, a joint investigation by the CBSA and another government agency responsible for issuing the necessary import or export documents into the illegal import or export of controlled goods.
23. Third-party information can make its way into CBSA files, such as criminal investigations or intelligence files, in the course of the administration or enforcement of CBSA legislation.
24. If the third party information is relevant to a criminal proceeding and subject to disclosure, the CBSA will notify the third party and explain the requirement to disclose the information. The CBSA will ask the originator of the information to edit

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and vet the information, which includes the identification of any information that they wish to have protected.

25. If the information was provided with a caveat that the document is not to be further disclosed without the consent of the originator, the CBSA must ask the third party if they would be willing to waive this caveat and, where possible, obtain written approval of consent. Consent to waive the caveat must be both informed and voluntary by the consenter.
26. In the event the third party originator is not willing to waive the caveat, the Crown must be made aware (as early as possible) by the lead investigator or the court liaison officer of the existence of the record.
27. It should be noted that Canadian courts have no jurisdiction to order any foreign law enforcement agency to turn over information that may be relevant to a prosecution in Canada to a Canadian prosecutor.

Privileged (exempted) information

28. Prosecutors may apply, pursuant to the *Canada Evidence Act*, for an order preventing disclosure of certain categories of evidence, including the following:
 - Information protected by informer privilege;
 - Information protected by solicitor/client privilege;
 - Information that would disclose a sensitive investigative technique;
 - Information that would jeopardize ongoing investigations;
 - Information that could affect international relations, national defence or national security;
 - Cabinet confidences;
 - Confidential information that should not be disclosed on the basis of other specified public interests (e.g. protecting the security or personal information of an innocent third party).
29. The CBSA will identify to the Crown prosecutor any relevant information the officer feels an exemption may be applied to; however, it is the Crown prosecutor that bears the onus of justifying withholding disclosure for any reason to the Court on a case by case basis. It will be the Court that has the final say on what will be exempted from disclosure.
30. An officer should not assume that certain information will be protected against disclosure; there is always a risk that a prosecution may result in the disclosure of information the CBSA would prefer not to be disclosed. CBSA officers should identify these concerns as early as possible during an investigation to allow for CBSA management and the Crown to assess whether the risks of possible disclosure outweigh the benefit of a prosecution.

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Disclosure of Officer Notes

31. CBSA officers are required to make notes in their issued officer notebooks and/or case notebooks at the time that the information is obtained or at the time the event occurs or as soon thereafter as possible.
32. In criminally prosecuted matters, the Crown must be provided with a copy of the handwritten notes of any officer involved in the matter, whether that officer is to be called as a witness or not, in the disclosure package. The officers involved are to provide the lead investigating officer with a signed copy of the notes taken in relation to the matter subject to the proceedings.
33. Court procedures can take several years to resolve and employees move around in the agency, therefore, original case files must contain very detailed notes of what was disclosed (a list of materials disclosed), who disclosed the information, who vetted the information, and who the disclosed information was transmitted to.
34. Further information on note-taking and officer notebooks can be found in the [Enforcement Manual Part 8 Chapter 1](#).

Editing/Vetting Disclosure information

35. It may be difficult for a prosecutor to know what details of investigative techniques would be considered sensitive, or what information might reveal the identity of a CBSA confidential human source. Therefore, the primary responsibility for reviewing documents for disclosure rests with the CBSA and includes identifying all information which may be subject to an exemption.
36. The CBSA must assess whether all or only part of the information needs to be redacted in accordance to the privilege categories outlined above. For example, an entire legal opinion is generally subject to solicitor/client privilege, whereas only parts of a witness statement may need to be protected from disclosure.
37. It is the responsibility of the officer who is the originator of the information, or the office that has control of the information, to indicate reasons why information should not be disclosed through the editing/vetting process.
38. CBSA officers must be cognisant not to over-edit and ensure editing is consistent.
39. It is **not** permissible for CBSA officers to claim privilege by withholding information from the Crown prosecutor. All relevant information to the proceedings must be disclosed to the Crown with the officer's recommendations for exemptions of privileged information via the editing/vetting process.

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40. The decision on whether or not the information meets the exemption guidelines will ultimately rest with the Crown. When in doubt about whether materials may be edited, CBSA officers are encouraged to consult the Crown prosecutor.

Loss or Destruction of Evidence

41. The Courts will require an explanation if relevant information is lost or destroyed. The CBSA and the Crown prosecutor will have to demonstrate whether reasonable steps were taken, in the circumstances, to preserve the evidence for disclosure or if the loss or destruction was a result of negligence.
42. Should relevant information or evidence for a prosecution in the possession or control of a CBSA officer be lost or destroyed, the officer will prepare a report, to be submitted to their manager and the Crown prosecutor, outlining what the evidence was, how it was lost or destroyed and what measures were taken to preserve the evidence.

ROLES & RESPONSIBILITIES

CBSA Criminal Investigators

43. Criminal investigators are responsible for providing all relevant information in their possession related to a criminal proceeding to the Crown prosecutor.
44. The regional Criminal Investigations office, in which the investigation and subsequent recommendation of charges to the Crown were made, has the responsibility for initiating disclosure procedures for all **CBSA led** criminal investigations.
45. The lead criminal investigator will contact each division or office in which an officer may have had contact with the subject or information pertaining to the case to determine if they possess any material, notes, or reports that may be subject to disclosure.
46. In turn, each division or office is responsible for identifying and providing any relevant information relating to the subject by the deadlines established by the lead investigator or the Crown prosecutor. Such information may be held in that divisional office, regional/district office, or at headquarters.
47. Additionally, should any officer hold any additional relevant information that is subject to disclosure, they should initiate contact with their regional Criminal Investigations office to advise them in a timely manner.
48. The lead criminal investigator may assist in the initial review of exemptions, identify any contentious matters, and ensure editing is consistent.

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49. In the case of third party information, if an originator refuses to waive the caveat or agree to provide an edited and vetted version of the information for disclosure purposes, the lead Investigator shall inform the Crown of the existence of this information as soon as possible.
50. The lead criminal investigator will provide the disclosure package to the regional Crown prosecutor in the manner prescribed.

Court Liaison Officers

51. For all other criminal prosecutions (e.g., impaired driving cases; drug cases) in which a CBSA officer may be called as a witness, the disclosure will be coordinated through the designated regional CBSA representative, normally the CBSA court liaison officer.
52. Court liaison officers are responsible for:
 - a) providing necessary guidance to CBSA personnel with regards to the court disclosure requirements set out by the local Crown and lead investigator regarding *Criminal Code*, *Controlled Drugs and Substances Act*, etc. offences;
 - b) informing local management and involved officers of upcoming court dates, which they will be expected to attend and ensure all relevant material to be disclosed has been provided to the appropriate Law Enforcement Agency and Crown;
 - c) identifying local disclosure issues for criminal offences(*Criminal Code*, *Controlled Drugs and Substances Act*, etc) and reporting these to the appropriate CBSA management.
53. In the case of third party information, if an originator refuses to waive the caveat or agree to provide an edited and vetted version of the information for disclosure purposes, the court liaison officer shall inform the Crown of the existence of this information as soon as possible.

All CBSA Officers (including criminal investigators and court liaison officers)

54. CBSA officers who are the creators and holders of relevant information are responsible for:
 - a) adhering to the policy and procedures set out in this chapter;
 - b) recording and maintaining detailed notes of an occurrence;

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- c) highlight any information (in a mark-up copy) they want exempted accompanied by a memo detailing the rationale for why the information should not be disclosed (refer to para 28 for privilege exemptions);
 - d) providing all edited/vetted information with an accompanying memo to the lead investigator or court liaison officer for review;
 - e) testifying in court in regards to actions undertaken in the administration and enforcement of their duties and stating their appropriate authorities.
55. When a third party has relevant information to a criminal proceeding and the information was provided with a caveat that the document is not to be further disclosed without the consent of the originator, the CBSA officer shall:
- a) notify the third party explaining the requirement to disclose the information;
 - b) ask the third party if they would be willing to waive the caveat and obtain their consent in writing, where possible;
 - c) ask the originator of the information to edit and vet the information, which includes the identification of any information that they wish to have protected;
 - d) in the event the third party originator is not willing to waive the caveat or agree to provide an edited and vetted version of the information for disclosure purposes, the CBSA officer shall notify the lead Investigator / court liaison officer, who will in turn, inform the Crown as soon as possible of the existence of the record.
56. For specific concerns on procedures in respect to a particular case, CBSA officers are encouraged to discuss their concerns with the lead CBSA investigator, court liaison officer, superintendent or manager, or police or law enforcement officer handling that particular case. In turn, the contact will communicate with the Crown Counsel if further clarification is required and when appropriate, arrange for a meeting between the officer(s) and the Crown.

Management

57. CBSA regional managers are responsible for:
- a) ensuring compliance with the disclosure policy and procedures;
 - b) providing the necessary assistance and support to officers ;
 - c) ensuring any disclosure issues are dealt with in a timely manner;

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- d) liaising with local Crowns and court liaison officers for purposes of resolution of disclosure issues;
- e) providing the Enforcement and Intelligence Programs Directorate with an accurate description of all areas of concern and policy questions in relation to disclosure.

REFERENCES

- 58. *Canadian Charter of Rights and Freedoms*
Canada Evidence Act
R v Stinchcombe, [1991] 3 SCR 326

ENFORCEMENT MANUAL

Part 9

INVESTIGATIONS AND CRIMINAL PROCEEDINGS

Chapter 7

CANADIAN VICTIMS BILL OF RIGHTS POLICY

23/07/15

POLICY STATEMENT

1. All rights afforded to victims under the *Canadian Victims Bill of Rights* (CVBR) will be adhered to by the Canada Border Services Agency (CBSA).

EFFECTIVE DATE

2. This policy came into effect on July 23, 2015, and is applicable to ongoing and future criminal investigations and proceedings.

PURPOSE AND SCOPE

3. The purpose of this policy is to ensure that the rights conferred to victims by the CVBR are fulfilled during a CBSA-led criminal investigation into an offence(s) under the *Immigration and Refugee Protection Act* (IRPA).
4. This policy applies to all criminal investigations staff and any other CBSA employees who are involved in managing and processing complaints from victims.

DEFINITIONS

5. The following definitions apply to this policy:
 - a) **Canadian Victims Bill of Rights (CVBR):** The CVBR creates statutory rights at the federal level including rights to information, protection, participation and restitution, and creates a remedial process for breaches of these rights.
 - b) **Criminal Investigations Staff:** Investigators and all CBSA employees who support, manage, and oversee the Criminal Investigations Program, including both regional and headquarters staff.
 - c) **Investigator:** A CBSA employee who conducts a criminal investigation of an alleged offence(s) under IRPA and other various Acts and regulations enforced by the Agency.
 - d) **Criminal Justice System:** The investigation and prosecution of offences in Canada, including IRPA offences.
 - e) **Crown:** The term "Crown" refers to Public Prosecution Service of Canada (PPSC).

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- f) **Criminal Investigation:** A criminal investigation by an investigator into an IRPA offence. For the purposes of when a victim's rights commence, the investigation is deemed to start at time of reporting of the offence to any criminal investigations staff. (*Section 18(2), CVBR*).
- g) **Offence:** An offence under Section 91 or Part 3 of the IRPA.
- h) **Police of Local Jurisdiction:** Depending on the geographic area, responsibilities for local law enforcement may be maintained by a municipal or provincial police force or the Royal Canadian Mounted Police.
- i) **Victim:** A victim is a foreign national present in Canada, a permanent resident, or a Canadian citizen who has suffered physical or emotional harm, economic loss, or property damage as the result of the commission or the alleged commission of an IRPA offence.
- j) **Victim's Representative:** Where the victim is deceased or incapable of acting on their own behalf, the following persons may act on the victim's behalf with respect to their CVBR rights:
 - i) the victim's spouse, or the individual who was at the time of the victim's death their spouse; or
 - ii) the individual who, at the time of the victim's death, was cohabiting with the victim in a conjugal relationship for at least one year; or
 - iii) a relative or dependant of the victim; or
 - iv) an individual who has in law or fact custody, or is responsible for the care or support of the victim; or
 - v) an individual who has in law or fact custody, or is responsible for the care or support of a dependant of the victim.

AUTHORITIES

- 6. Authority for the CBSA to conduct a criminal investigation into an IRPA offence is found in Section 5 of the *Canada Border Services Agency Act*.
- 7. Authority for the CBSA to share information with a victim regarding a criminal investigation into an IRPA offence is established under Section 7 of the CVBR.

POLICY GUIDELINES

General

8. All Acts, regulations, rules or orders, enacted before or after the CVBR comes into effect shall be interpreted and applied in a matter that is compatible with the rights conferred upon victims by the CVBR.
9. Under the CVBR, victims have the right to information, participation, protection, restitution, and to submit a complaint for any breach of these rights. However, the right to restitution is decided by the courts and is not covered by this policy.
10. Consideration shall be given by criminal investigations staff to a victim's rights throughout the investigation into an offence(s).
11. The statutory obligations respecting a victim's rights shall be interpreted and applied in a reasonable manner that does not:
 - a) interfere with an investigator's discretion regarding the conduct of a criminal investigation;
 - b) cause excessive delay, compromise or hinder an investigation;
 - c) cause injury to international relations, national defence or national security;
 - d) endanger the life or safety of any individual; and
 - e) lead to a breach of obligations under the *Privacy Act*.

Limitations of the CVBR

12. *Entering or remaining in Canada (Section 24)*: Nothing in the CVBR gives a victim or a person acting on the victim's behalf, a right to enter or to remain in Canada beyond the period they are authorized to remain in Canada, or delays the enforcement of a removal order against them.
13. *No status (Section 27)*: Nothing in the CVBR grants the victim status as a party, intervenor or observer in any proceedings.
14. *No rights to personal information on other individuals*: Nothing in the CVBR allows criminal investigations staff to provide the victim with personal non-public information concerning the accused without that individual's consent.

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15. *No cause of action (Section 28)*: An infringement or denial of a right under the CVBR does not give rise to a cause of action or any right to damages against any person or entity.
16. *No appeal (Section 29)*: No appeal of any decision can be launched solely on the grounds that a victim's right under the CVBR has been infringed or denied.

Identification of Victim

17. Criminal investigations staff will assume any person who comes forward and presents themselves to the Agency as a victim of an offence under IRPA is a victim unless there is credible evidence to the contrary.
18. If there is credible evidence showing that the alleged victim was complicit in the offence under investigation, that individual shall not be considered a victim for the purposes of the CVBR. For example, evidence that an alleged victim of consultant fraud was aware that the consultant was counselling misrepresentation.
19. Evidence of complicity can arise at any time during the investigation and is grounds for considering the individual not to be a victim entitled to CVBR rights. Evidence of complicity shall be documented in the case file.
20. Should anyone other than a victim attempt to exercise the victim's rights, and before releasing any information to a representative of the victim, the investigator will request documentary proof (all information must be added to the case file) of the following:
 - a) death or incapacity of the victim;
 - b) relationship to the victim; and
 - c) where possible, consent from the victim for the representative to act on their behalf.

Documenting Interactions with Victims

21. If an investigator encounters a victim during a criminal investigation, the investigator shall document all interactions with the victim in the case file.
22. When an investigator records information, they should demonstrate how the victim's rights were respected, with tangible steps clearly documented.

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23. Beyond documenting all conversations and interactions with a victim, the investigator shall also record the following in the case file:
- a) Name, date of birth, address, phone number, email address and citizenship status of the victim;
 - b) If a person is acting on behalf of the victim, their name, date of birth, address, phone number, email address, and their relationship with the victim.

Information

24. *Disclosure:* If the investigation produces sufficient evidence for laying charges, the investigator shall follow the direction in the Disclosure Policy of the Agency to determine what information from the victim may be relevant to share with the Crown.
25. *Sharing:* Personal information of a victim may only be shared with other law enforcement partners and organizations where allowed by law. The sharing of personal information collected under the IRPA is governed by the *Privacy Act*.
26. *Management:*
- a) Personal information shall be handled and stored at a minimum as Protected B information.
 - b) All information collected from a victim must be managed, transmitted, stored and handled in accordance with Treasury Board Guidelines and CBSA information management policies, as well as in compliance with the *Security of Information Act* (R.S. 1985, c. O-5).

Victim's Rights

27. A victim's rights to information and identity protection are triggered upon request. However, rights to participation and protection must be considered by criminal investigations staff from the time the alleged offence is reported.

Right to Information *(Sections 6, 7 and 8, CVBR)*

28. Victims have the right, upon request, to information about:

- a) the criminal justice system and the role of victims in it;
- b) the services and programs available to them as victims;
- c) how to file a complaint with the Agency for any infringements or denial of rights under the CVBR;
- d) the status and outcome of the investigation into the offence; and
- e) the location of proceedings in relation to the offence, when they will take place, their progress and outcome.¹

29. While the CVBR requires victims to request information on the elements outlined in 28(a) to (e) above, criminal investigations staff shall provide information to victims without a specific request as well, when warranted.

30. Once a request for information is triggered, and depending on the nature of this enquiry, criminal investigations staff shall provide the victim with fulsome responses or provide them with details on where to find additional information.

31. Information expected to be provided directly by criminal investigations staff includes details on local victim services, the status and outcome of an investigation, and the Agency's complaint processes.

- a) For information on victim services, criminal investigations staff shall direct victims to <http://www1.canada.ca/en/services/safety/victims/index.html>. This website includes a victim services directory, allowing victims to search for organizations by geographic location.
- b) For status updates regarding an investigation, criminal investigations staff shall provide the victim with high-level information, taking care that any details provided will not jeopardize the investigation or include personal information about the accused or other individuals.
- c) For the complaint process, criminal investigations staff shall provide victims with an overview of how the process would unfold if the victim

¹ At trial stage, the Crown should play a lead role in interacting with a victim. However, criminal investigations staff may receive the odd request for information from victims. This information should be provided if available, with the caveat the Crown is better equipped to provide the latest information and here is a contact to follow up with.

wishes to submit a formal complaint with the Agency. To help inform this discussion, see below in section 48 to 52 and Annex A.

32. If the victim asks for in-depth information about the criminal justice system, staff shall direct the victim to <http://www1.canada.ca/en/services/safety/victims/index.html>. However, staff shall strive to answer straightforward questions as well.
33. If a victim requests information on a location and/or date of a court proceeding, and criminal investigations staff are aware of this information, they shall provide it to the victim. If the question from the victim concerns the progress of a particular proceeding, this information shall be provided when available. All updates provided on the status of a proceeding are to be high-level as court-based victim services and the Crown are expected to play a lead role interacting with a victim during the trial stage.
34. In the event an investigation is not initiated or no charges are laid, criminal investigations staff shall provide high-level information to the victim, upon request, regarding the reasons for this result and document this communication in the case file.

Right to Participation *(Sections 14 and 15, CVBR)*

35. Victims have the right to convey their views about decisions to be made by the CBSA that affect their rights and to have those views considered.
36. Victims are not required to request these rights.
37. Victims shall be allowed to communicate their views on the investigation. However, simply because a victim has voiced a particular preference does not oblige investigators to take that action. The investigator shall consider the merits of the victim's views and make a decision in the best interests of the investigation. All discussions with the victim shall be documented in the case file.

Rights to Protection *(Section 9-10, CVBR)*

38. Victims have the right:
 - a. to have their security considered by the appropriate authorities in the criminal justice system;

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- b. to have reasonable and necessary measures taken by the appropriate authorities in the criminal justice system to protect them from intimidation and retaliation.
- 39. Investigators shall take into account the victim's security throughout the investigative process. However, as investigators are peace officers only for legislation within the CBSA mandate, the police of local jurisdiction (see definition 'h' above) are considered to be the appropriate authorities to provide protection.
- 40. If a victim notifies any criminal investigations staff that they are in fear for their safety or if there is additional evidence (other witnesses, direct observations, or physical evidence) suggesting that the victim is in danger, they shall advise the victim to contact the police of local jurisdiction and provide them with the appropriate information.
- 41. If the victim does not want to involve the police of local jurisdiction, explain that the CBSA is not in a position to guarantee the victim's safety. Ultimately, the victim will make the final decision regarding their safety.

Right to Privacy (*Section 11, CVBR*)

- 42. Without request, victims have the right to have their privacy considered by criminal investigations staff throughout an investigation.
- 43. Investigators shall consider possible impacts on the victim's privacy and manage the investigation so that any impact on the victim is minimized to the greatest extent possible given the exigencies of the investigation.
- 44. The right to privacy is intended to prevent the re-victimization of the victim as a result of their interaction with the criminal justice system.

Right to Identity Protection (*Section 12, CVBR*)

- 45. Every victim has the right to request that their identity be protected if they are a complainant to the offence or a witness in proceedings related to the offence.
- 46. In this situation, criminal investigations staff should take all necessary precautions to ensure the victim's identity is not disclosed publicly or via indirect means – for example, by providing enough information to enable others to discover their identity.

47. When such requests are made by the victim, investigators shall document the request on the file and ensure that the Crown is made aware of the request when handing over the case for prosecution.

Complaints *(section 25, CVBR)*

48. Under the CVBR, a victim may lodge a complaint with the CBSA if they feel that their rights have been breached during the investigation of an offence.
49. The CBSA is required to ensure a process exists to accept, review, and address complaints from victims.
50. When a victim indicates to any criminal investigations staff that they believe their CVBR rights have been breached by the CBSA and/or that they may file a formal complaint in relation to the investigation, the employee shall:
- a) attempt to defuse the situation by exploring the victim's concerns;
 - b) remind the victim that there is a difference between being unsatisfied with the status and/or outcome of an investigation versus believing that the CBSA did not adhere to their rights;
 - c) if the victim insists on filing a complaint, inform them that they can access a complaint form online at the CBSA's external website:
<http://cbsa-asfc.gc.ca/contact/cvbr-ccd-v-eng.html>.
51. If it appears that the victim will file a complaint, the criminal investigations employee shall inform their supervisor of this development, while providing an account of what steps had been taken to date to de-escalate the situation.
52. For detailed information on expectations and processes related to CVBR complaints, including roles and responsibilities of all criminal investigations staff and other Agency staff involved in handling complaints, please see Annex A below. For more general information on the Agency's complaint process, please consult the Enhanced Complaint Mechanism – Standard Operating Procedures.

ROLES AND RESPONSIBILITIES

**Director, Intelligence, Targeting and Criminal Investigations Program
Management Division, Enforcement and Intelligence Programs Directorate,
Programs Branch**

53. Responsibilities:

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As functional program authority for the CBSA's obligations under the CVBR,

- a) Manage the policy and governance of the CVBR for the Criminal Investigations Program;
- b) Provide functional direction on the application of this policy;
- c) Establish a framework for reporting on implementation of CVBR;
- d) Act as the Office of Primary Interest for policy related to the CVBR complaint process;
- e) Report on the national implementation of CVBR to senior management and external actors as required; and
- f) Serve as the CBSA contact for the Office of the Federal Ombudsman for Victims of Crime and other national stakeholders in the area of victims' rights.

Director, Criminal Investigations Division, Enforcement and Intelligence Operations Directorate, Operations Branch

54. Responsibilities:

- a) Ensure that compliance monitoring occurs on a regular basis to ensure consistent national program delivery;
- b) Recommend to the Director of the Intelligence, Targeting and Criminal Investigations Program Management Division any required updates to this policy;
- c) Report to the Director of the Intelligence, Targeting and Criminal Investigations Program Management Division any operational occurrences, issues or information which may impact the integrity of the CBSA's compliance with this policy; and
- d) Collect applicable statistics and report to the Director of Intelligence, Targeting and Criminal Investigations Program Management Division on the national implementation of the CVBR.

Director, Recourse Program Management Division, Corporate Affairs Branch

55. Responsibilities:

- a) Accept and triage all complaints from victims of IRPA offences for breach of their CVBR rights via the Enhanced Complaint Mechanism portal;
- b) Refer complaints to the Office of the Vice-President of Operations Branch; and
- c) Track and report on CVBR complaints and outcomes.

Office of the Vice-President, Operations Branch

56. Responsibilities:

- a) Refer complaints to the identified regional office for response.

Enforcement and Intelligence Directors (Regional)

57. Responsibilities:

- a) Ensure application of this policy, procedures and directives;
- b) Take appropriate corrective action in the event of any breach of this policy;
- c) Provide operational input on this associated policy to the Director of the Criminal Investigations Division, Enforcement and Intelligence Operations Directorate;
- d) Approve all Agency responses to any complaints from victims; and
- e) Notify the Director, Criminal Investigations Division, Enforcement and Intelligence Operations Directorate, Operations Branch, of any unresolved complaints from victims.

Enforcement and Intelligence Assistant Directors (Regional)

58. Responsibilities:

- a) Ensure that investigators comply with this policy;
- b) Support statistical reporting by headquarters as needed;
- c) Ensure subject matter expertise is available for the purpose of operational policy, functional guidance, and/or training development, when needed; and
- d) In the event of receiving a complaint from a victim, please consult Annex A of this policy and follow all outlined procedures.

Investigators

59. Responsibilities:

- a) Comply with this policy for IRPA offences;

Regional Program Officers

60. Responsibilities:

- a) Forward all CVBR complaints to the applicable Enforcement and Intelligence Division in the regions;
- b) Draft responses to victims' complaints, send them to the appropriate Enforcement and Intelligence Director for review and approval; and
- c) Fill out a Complaint Input Form and send it to the Recourse Program Management Division and the Office of the Vice President, Operations Branch at headquarters.

ENQUIRIES

- 61. Enquiries related to this policy can be addressed to the Director, Intelligence, Targeting and Criminal Investigations Program Management Division, Enforcement and Intelligence Programs Directorate, National Headquarters.

ANNEX A – COMPLAINT PROCEDURES

OVERVIEW

1. This Annex provides information on how a complaint made under the CVBR is to be managed and processed, including respective roles and responsibilities of CBSA staff in the Recourse Directorate at headquarters and in the Corporate and Program Services Divisions (CPSDs) and Enforcement and Intelligence Divisions in the regions.
2. All CBSA staff involved in handling complaints from victims should remember that the CVBR stipulates:
 - *Section 28: No cause of action or right to damages arises from an infringement or denial of a right under this Act; and*
 - *Section 29: No appeal lies from any decision or order solely on the grounds that a right under this Act has been infringed or denied.*

FILING

3. All CVBR complaints should be submitted through the CBSA's external website at <http://cbsa-asfc.gc.ca/contact/cvbr-ccdvv-eng.html>.
4. If a victim wishes to file a complaint verbally, criminal investigations staff should attempt to resolve the issue directly. If no resolution can be reached, the victim should be directed to file a complaint online.

TRIAGE

5. When the victim submits the complaint online, the information will be received by the Monitoring, Systems, and Coordination Unit (MSCU), Recourse Program Management Division at headquarters and will be assigned a unique Complaint File Number.
6. Once the complaint is received, the MSCU performs a triage function and forwards it to the Office of the Vice-President (VPO), Operations Branch. The VPO then forwards the complaint to the appropriate regional CPSD for processing.²

² Some regions may choose to involve the Regional Director General's office at this point. This policy does not seek to alter this process but due to the lower risk nature of this policy, it is not a requirement for all regions.

7. The Regional Program Officer (RPO), located in the CPSD, is responsible for coordinating the complaint process and tasking the complaint to the implicated regional Enforcement and Intelligence Division. The RPO will provide the Enforcement and Intelligence Division with all pertinent information, a Record of Phone Call form, and a Complaint Investigation Report template for completion as needed.

REVIEW AND DRAFTING A RESPONSE

8. The Enforcement and Intelligence Assistant Director will assess the details of the complaint, meet with the implicated criminal investigations employee and review all information regarding the victim in the case file.³
9. Within 14 calendar days of the CBSA receiving the complaint, the Enforcement and Intelligence Assistant Director will contact the victim. The purpose of this outreach is to notify the victim that their complaint has been received, request any additional information, and inform the victim of next steps. Where possible, the Assistant Director should attempt to resolve the complaint at this stage.
 - a. If the complaint is not admissible under CVBR, i.e. makes no mention of a breach of rights, the Assistant Director should inform the victim. In this situation, the victim may simply be unsatisfied with the outcome of an investigation.
 - b. If the victim wishes to maintain their complaint despite it not being admissible under CVBR, it will be treated as a regular complaint. In this scenario, the RPO will ensure that the proper complaint type is flagged to MSCU when completing the Complaint Input Form at the end of the complaint process.
 - c. If the Assistant Director is able to resolve the complaint, he or she will complete a Record of Call and forward this to the appropriate RPO. At this point, the RPO will move to close the file and the complaint will be deemed resolved.
10. If it is a legitimate complaint under CVBR, the Enforcement and Intelligence Assistant Director will re-examine all information in the case file and schedule a follow-up meeting with the implicated criminal investigations employee.

³ If the Enforcement and Intelligence Assistant Director position is vacant, all corresponding responsibilities in this policy are to be delegated to whoever maintains direct supervisory functions over regional criminal investigations operations.

11. With a more fulsome picture of what transpired, the Enforcement and Intelligence Assistant Director will discuss with the Enforcement and Intelligence Director as needed and then complete the Complaint Investigation Report. In the Report, a determination should be made as to whether the complaint was founded, unfounded, or undetermined. To help guide this work, please see below.

Category	Review	Response to Victim
Founded	Staff decisions and/or actions were found not to comply with this policy	- Indicate what rights were not respected - When relevant, identify areas where corrective measures will be considered
Unfounded	Staff complied with this policy	- Indicate how staff complied with this policy - Note the CBSA's ongoing commitment to treat victims with respect and dignity
Undetermined	Inconclusive results	Responses should be drafted to victims according to the specifics which led to an inconclusive finding such as incomplete information from the victim.

12. The Complaint Investigation Report, along with any other supporting documentation, will be forwarded to the RPO who reviews the file and drafts a written response to the victim.

APPROVAL AND RESPONSE RELEASED

13. All proposed responses by the RPO to the victim will be vetted and approved by the Enforcement and Intelligence Director.⁴

14. The Enforcement and Intelligence Assistant Director will debrief with the implicated criminal investigations employee on the final decision in response to the complaint.

15. The RPO will provide the final response to the victim and then complete the Complaint Input Form to ensure tracking and reporting to headquarters on complaint outcomes.⁵

⁴ Some regions may prefer to have Regional Director Generals approve complaint responses to victims. This policy does not attempt to alter this process but establishes a minimum director-level sign off.

⁵ For some regions, the response to the victim may be sent by the Enforcement and Intelligence Divisions. In this scenario, the Enforcement and Intelligence Assistant Director is responsible for ensuring the RPO is notified afterwards.

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Canadian Victims Bill of Rights Policy

- 16.** When completing the Complaint Input Form, RPOs will select one or more of the CVBR complaint types. The complaint type(s) chosen should reflect which CVBR right(s) the victim originally claimed that the Agency breached.⁶
- 17.** The Agency will strive to provide a final response to the victim within 40 calendar days after the complaint is received.

FILE CLOSEOUT

- 18.** For reporting purposes, the RPO will forward a copy of the response and the Complaint Input Form to the VPO, Operations Branch, and the Recourse Directorate's complaints mailbox at CBSACUD@cbsa-asfc.gc.ca.
- 19.** The MSCU will update their complaint database and close the file.
- 20.** Should a victim continue to communicate their dissatisfaction with the Agency's response, any CBSA staff contacted shall inform the victim of the option of filing a complaint with the Office of the Federal Ombudsman for Victims of Crime.⁷

⁶ The updated Form, BSF479, can be found at [\[link\]](#) and was revised to include several new CVBR complaint types, representing the three sets of rights victims are entitled to under the CVBR during a criminal investigation. These include rights to information, participation, and protection.

⁷ Victims can contact the Office of the Federal Ombudsman for Victims of Crime to make a complaint about any federal agency or federal legislation dealing with victims of crime.

CBSA ENFORCEMENT MANUAL

Part 11

GLOSSARY

2018-10-16

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ABDUCTION	ENLÈVEMENT
As per sections 280 to 283 of the <i>Criminal Code</i> , the term refers to taking or causing to be taken an unmarried person under sixteen-years-of-age, a person under fourteen-years-of-age, or the taking of a child in contravention of a custody order against the will of the parent, guardian, or other person who has lawful care of charge of them.	D'après les articles 280 à 283 du Code criminel, ce terme désigne le fait d'enlever ou de faire enlever une personne non mariée, âgée de moins de seize ans ou une personne de moins de quatorze ans ou encore le fait d'enlever un enfant contrairement à une ordonnance de garde et contre la volonté du parent, du tuteur ou de toute autre personne qui en a la garde ou la charge légale.
ACCELERATED COMMERCIAL RELEASE OPERATIONS SUPPORT SYSTEM (ACROSS)	SYSTÈME DE SOUTIEN DE LA MAINLEVÉE ACCÉLÉRÉE DES EXPÉDITIONS ÉÉÉ COMMERCIALES (SSMAEC)
ACROSS is a mainframe system that allows importers, brokers, carriers, freight forwarders, exporters and warehouse operators to exchange information electronically with CBSA; thereby removing the requirement to present hard copy conveyance, cargo and release information. This speeds up release times and reduces the workload associated with low-risk shipments, because the information can be transmitted, from anywhere in Canada, one hour to 30 days before the goods arrive at the border. ACROSS provides many benefits to commercial importers and strengthens our ability to protect both Canadian society and the economy.	Le SSMAEC est un système informatique central qui permet aux importateurs, aux courtiers, aux transporteurs, aux transitaires, aux exportateurs et aux exploitants d'entrepôts d'échanger de l'information par voie électronique avec l'ASFC. Il élimine ainsi le besoin de présenter une copie papier de l'information sur le moyen de transport, le fret et la mainlevée et il réduit les délais de mainlevée ainsi que la charge de travail associée aux expéditions à faible risque, car l'information peut être transmise de n'importe où au Canada entre une heure et 30 jours avant l'arrivée des marchandises à la frontière. Le SSMAEC offre de nombreux avantages aux importateurs commerciaux, en plus de renforcer la capacité de l'Agence à protéger la société et l'économie canadiennes.
ACTUS REUS	ACTUS REUS
A wrongful deed which when combined with <i>mens rea</i> renders a person criminally liable. One of the constant elements of an offence, which must be proved.	Acte coupable qui, joint à la <i>mens rea</i> , rend une personne passible de poursuites au criminel. C'est l'un des éléments constitutifs d'une infraction qui doit être étayé par une preuve.

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ADMINISTRATIVE MONETARY PENALTY SYSTEM (AMPS)	RÉGIME DE SANCTIONS ADMINISTRATIVES PÉCUNIAIRES (RSAP)
The Administrative Monetary Penalty System (AMPS) is a civil penalty regime that secures compliance with Customs' commercial legislation through the application of monetary penalties, based on the type, frequency and seriousness of the infraction.	Le Régime de sanctions administratives pécuniaires (RSAP) est un régime de sanctions au civil qui permet d'assurer l'observation de la législation douanière commerciale grâce à l'imposition de sanctions pécuniaires, en tenant compte du type, de la fréquence et de la gravité de l'infraction.
ADVANCE COMMERCIAL INFORMATION (ACI)	INFORMATION PRÉALABLE SUR LES EXPÉDITIONS COMMERCIALES (IPEC)
The Advance Commercial Information program allows the Canada Border Services Agency (CBSA) to better protect Canadian society by getting the right information at the right time to make informed decisions about whether to examine shipments. ACI is introducing more effective risk management processes and tools for unknown and high-risk shipments (non-Customs Self-Assessment or FAST), to enhance our ability to detect contraband and threats to our health, safety, and security. ACI Marine - Automated targeting and risk assessment of electronic cargo, conveyance and supplemental information from transborder marine carriers. ACI Air - Automated targeting and risk assessment of electronic cargo, conveyance and supplemental information from air carriers. ACI Bay Plan - Automated targeting and risk assessment of electronic vessel stowage plan from marine carriers.	Le programme d'information préalable sur les expéditions commerciales (IPEC) permet à l'Agence des services frontaliers du Canada (ASFC) de protéger plus efficacement la société canadienne qui obtient les données voulues au bon moment afin de prendre des décisions éclairées quant à la nécessité d'examiner ou non des expéditions. Le programme IPEC met de l'avant des processus et des outils améliorés de gestion des risques permettant de cerner les expéditions à risque élevé ou inconnu (non-PAD ou EXPRES) et de renforcer ainsi la capacité de l'Agence à détecter la contrebande et les menaces à notre santé et à notre sécurité. IPEC – Mode maritime : Ciblage et évaluation automatisés des risques à l'aide des données électroniques sur le fret, le moyen de transport et des données supplémentaires provenant des transporteurs maritimes transfrontaliers. IPEC – Mode aérien : Ciblage et évaluation automatisés des risques à l'aide des données électroniques sur le fret, le moyen de transport et des données supplémentaires provenant des transporteurs aériens. IPEC – Plan de chargement : Ciblage et évaluation automatisés des risques à l'aide du plan d'arrimage des navires transmis électroniquement par les transporteurs maritimes.

ADVANCED PASSENGER INFORMATION (API)	INFORMATION PRÉALABLE SUR LES VOYAGEURS (IPV)
API is data identifying the person, including full name, date of birth, gender, citizenship, travel document type and number and country of issue.	L'IPV représente les données qui identifient une personne, y compris le nom complet, la date de naissance, le sexe, la citoyenneté, le type de document de voyage et le numéro et pays d'émission.
ALLEGATION	ALLÉGATION
A statement that provides the reason for taking action against goods.	Énoncé de la raison invoquée d'effectuer une action contre des marchandises.
API AUTHORIZED OFFICER - MINISTER'S REPRESENTATIVE	AGENT AUTORISÉ DE L'IPV - REPRÉSENTANT DU MINISTRE
API authorized officers are employees who are authorized to access API/PNR data. The Minister's representative is a person authorized by the Minister to obtain such information.	Les agents autorisés de l'IPV sont des employés qui ont accès aux données de l'IPV/DP. Le représentant du ministre est un employé autorisé par le ministre à obtenir de tels renseignements.
APPEAL	APPEL
A request, usually written, for a review by higher authority of some action that has been taken or enforced.	Demande présentée, habituellement par écrit, à une autorité supérieure pour qu'une mesure qui a été prise ou appliquée fasse l'objet d'une révision.
APPEARANCE NOTICE	CITATION À COMPARAÎTRE
A notice to compel the appearance in court of a person not yet charged with an offence. A notice in Form 9 issued by a peace officer.	Ordre de comparaître devant un tribunal délivré à une personne qui n'est pas encore inculpée d'infraction. Citation selon la formule 9, délivrée par un agent de la paix.
APPROVED BREATH ANALYSIS INSTRUMENT (ABAI)	ALCOOTEST APPROUVÉ
An instrument of a kind that is designed to receive and make an analysis of a sample of the breath of a person in order to measure the concentration of alcohol in the blood of that person and is approved as suitable for the purposes of section 258 of the <i>Criminal Code</i> by order of the Attorney General of Canada.	Instrument du type destiné à recueillir un échantillon de l'haleine d'une personne et à en faire l'analyse en vue de déterminer l'alcoolémie de cette personne, qui est approuvé pour l'application de l'article 258 du <i>Code criminel</i> par un arrêté du procureur général du Canada.

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APPROVED SCREENING DEVICE (ASD)	APPAREIL DE DÉTECTION APPROUVÉ (ADA)
A device of a kind that is designed to ascertain the presence of alcohol in the blood of a person and that is approved for the purposes of section 254 of the <i>Criminal Code</i> by order of the Attorney General of Canada.	Instrument d'un genre conçu pour déceler la présence d'alcool dans le sang d'une personne et approuvé pour l'application de l'article 254 du <i>Code criminel</i> par un arrêté du procureur général du Canada.
ARREST	ARRÊTER
To deprive a person of his liberty by legal authority. Also, the action of taking custody of another person for the purpose of holding or detaining the person to answer a criminal charge.	Priver une personne de sa liberté en vertu d'une autorisation légale. En outre, l'action de prendre la garde d'une autre personne en vue de retenir ou de détenir la personne pour répondre à une accusation au pénal.
ASCERTAINED FORFEITURE	CONFISCATION COMPENSATOIRE
This is an assessment of an amount of money for goods that have been imported or exported in contravention of the <i>Customs Act</i> , where the goods themselves are not available for physical seizure, or the seizure would be impractical.	La confiscation est la cotisation d'un montant d'argent pour des marchandises importées ou exportées en contravention de la <i>Loi sur les douanes</i> , lorsque les marchandises ne peuvent être saisies ou que la saisie est problématique.
AUTHORIZED PERSON	PERSONNE AUTORISÉE
An authorized person is any person engaged or employed or formerly engaged or employed	Une « personne autorisée » signifie toute personne engagée ou employée, ou précédemment engagée ou employée
a) by or on behalf of Her Majesty,	a) par Sa Majesté ou en son nom,
b) by or on behalf of an agent of Her Majesty, or	b) par un mandataire de Sa Majesté ou en son nom,
c) by or on behalf of an agent of an agent of Her Majesty,	c) par un mandataire d'un mandataire de Sa Majesté ou en son nom,
to assist in carrying out the purposes and provisions of the <i>Customs Act</i> or the <i>Customs Tariff</i> or an agreement made under subsection 147.1(3) of the <i>Customs Act</i> .	pour aider à la réalisation des objets de la <i>Loi sur les douanes</i> ou du <i>Tarif des douanes</i> ou d'un accord conclu en vertu du paragraphe 147.1(3) de la <i>Loi sur les douanes</i> et à l'application de leurs dispositions.

BENEFIT OF THE DOUBT	BÉNÉFICE DU DOUTE
This is a process of decision-making whereby, having considered and weighed all the evidence and circumstances of a specific matter, doubt still remains as to whether a particular action such as seizure action should be taken. When such doubt remains, the benefit of this doubt is given to the party against whom the action would be taken and the decision is rendered in their favour.	Élément intervenant dans la prise de décision lorsqu'il existe encore un doute quant à l'opportunité de prendre une mesure quelconque telle que la saisie après avoir fait l'examen et l'évaluation de tous les éléments de preuve et de toutes les circonstances d'une affaire particulière. Lorsqu'il subsiste un doute, le bénéfice de ce doute est accordé à la partie visée par les mesures envisagées, et la décision est rendue en sa faveur.
BUSINESS NUMBER (BN)	NUMÉRO D'ENTREPRISE (NE)
Agency assigned number that identifies the client responsible for payment of duty and taxes and any outstanding penalties.	Numéro attribué par l'Agence pour identifier le client qui doit payer des droits et des taxes et toute pénalité en souffrance.
CRIMINAL NAME INDEX (CNI)	FICHER JUDICIAIRE NOMINATIF (FJN)
See links under CPIC System.	Voir les liens sous Système du CIPC.
CANADIAN POLICE INFORMATION CENTRE (C.P.I.C.)	CENTRE D'INFORMATION DE LA POLICE CANADIENNE (C.I.P.C.)
A computerized storage and retrieval system, monitored by the RCMP, containing files related to persons, vehicles, boats and motors, property and criminal records.	Réseau informatique contrôlé par la GRC qui permet le stockage et l'extraction de données dans des dossiers concernant des personnes, des véhicules, des bateaux et des moteurs, des biens et des casiers judiciaires.
CANNABIS	CANNABIS
A cannabis plant and anything referred to in Schedule I of the <i>Cannabis Act</i> but does not include anything referred to in Schedule II of the <i>Cannabis Act</i> .	Plante de cannabis et toute chose visée à l'annexe 1 de la <i>Loi sur le cannabis</i> . Sont exclues de la présente définition les choses visées à l'annexe 2 de la <i>Loi sur le cannabis</i> .
CANUTEK	CANUTEK
The Canadian Transport Emergency Centre is operated by Transport Canada to assist emergency response personnel in	Le Centre canadien d'urgence transport est exploité par Transports Canada afin d'aider le personnel d'intervention lors de

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handling dangerous-goods emergencies.	situation d'urgence mettant en cause des marchandises dangereuses.
CAUTION	AVIS
A warning or notice given to an individual concerning the making of statements.	Avertissement donné à une personne concernant l'énoncé de déclarations.
CAVITY SEARCH	EXAMEN DES CAVITÉS CORPORELLES
This term refers to the physical inspection of a person's body cavities by qualified medical personnel, on behalf of CBSA in order to detect unreported, prohibited, controlled, or regulated goods that the person may have concealed. This may include the use of x-rays and or emetics.	Cette expression se rapporte à l'examen physique des cavités corporelles d'une personne par un membre du personnel médical qualifié, au nom de l'ASFC, à la recherche de marchandises non déclarées, prohibées, contrôlées ou réglementées que cette personne aurait pu dissimuler. Un tel examen peut comprendre l'utilisation de radioscopies ou d'émétiques.
CHAIN OF CUSTODY	CHAÎNE DE POSSESSION
The one who offers real evidence must account for the custody of the evidence from the moment in which it reaches their custody until the moment in which it is offered in evidence.	Selon le droit de la preuve, la personne qui présente une preuve matérielle doit rendre compte de la garde des éléments de preuve en sa possession depuis le moment où ils sont entrés en sa possession jusqu'au moment de leur présentation en preuve.
CHILD	ENFANT
A person who is or, in the absence of evidence to the contrary, appears to be under the age of 12 years.	Personne qui a moins de 12 ans ou qui, à moins de preuve contraire, semble avoir moins de 12 ans.
CIVIL ACTION	ACTION AU CIVIL
An action can be either "civil" or "criminal". A civil action is taken under the process of a civil proceeding to enforce re-dress or protect rights. For example, the seizure of goods or the assessment of an administrative monetary penalty for a violation of the <i>Customs Act</i> is a civil action.	Une action peut être intentée au civil ou au criminel. Une action au civil prise en vertu du droit civil vise à faire valoir ou protéger des droits ou à obtenir réparation. Par exemple, la saisie de marchandises ou l'émission d'une sanction pécuniaire administrative pour une infraction à la <i>Loi sur les douanes</i> est une action au civil.

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CIVIL LAW	DROIT CIVIL
Civil laws are concerned with civil or private rights and remedies, as contrasted with criminal laws.	Le droit civil traite des droits et des recours civils ou privés, contrairement au droit pénal.
COMMERCIAL AIR SERVICE	SERVICE AÉRIEN COMMERCIAL
An air service is commercial if there is any use of aircraft for hire or reward.	Un service aérien est commercial lorsqu'il comprend l'utilisation d'un aéronef contre paiement ou rémunération.
COMMERCIAL GOODS/SHIPMENTS	MARCHANDISES OU EXPÉDITIONS COMMERCIALES
Goods that are imported for sale in Canada or for any industrial, occupational, institutional, or other like use are considered commercial.	Les marchandises importées au Canada pour y être vendues ou pour servir à des fins industrielles, professionnelles ou institutionnelles ou à d'autres fins semblables.
COMMERCIAL PASSENGER CARRIER	TRANSPORTEUR COMMERCIAL DE VOYAGEURS
Any person who owns or operates an airline, cruise line, ferry service, railway company or bus company for the purpose of carrying or transporting passengers for hire or reward, is considered a commercial carrier.	Toute personne qui possède ou exploite une entreprise aérienne, de paquebots de croisière, de traversiers, ferroviaire ou d'autocars afin de transporter des passagers contre paiement ou rémunération est considérée à titre de transporteur commercial.
COMMERCIAL PASSENGER CONVEYANCE	MOYEN DE TRANSPORT COMMERCIAL DE PASSAGERS
Any publicly available conveyance used in the transportation of passengers by a commercial passenger carrier, charter, or vendor such as an aircraft, cruise ship, ferry, rail car, bus or other contrivance.	Tout moyen de transport mis à la disposition du public et utilisé pour le transport de passagers par un transporteur, un affréteur ou un vendeur, comme un aéronef, un paquebot de croisière, un traversier, un wagon de chemin de fer ou tout autre moyen de transport.
COMMISSIONER	COMMISSAIRE
"Commissioner" has the same meaning as in subsection 2(1) of the <i>Customs Act</i> .	« Commissaire » a la même signification que la définition donnée au paragraphe 2(1) de la Loi sur les douanes.

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COMPLIANCE VERIFICATION	VÉRIFICATION DE L'OBSERVATION
<p>This term refers to the act of verifying compliance with the legislation administered by CBSA in the areas of cargo and release. Verification may be in the form of random or targeted examinations, review of trade information, and periodic on-site audits or investigations. The compliance verification program carries out analyses and develops specific targets for cargo and release programs such as misdescription, enclosure, and other government departments, and measures and reports on levels of compliance in these areas. By monitoring these targets, the extent of compliance/non-compliance is assessed. These responsibilities are outside the Enforcement Branch mandate and, therefore, do not constitute "enforcement" activities.</p>	<p>Ce terme se rapporte à la vérification de l'observation à l'égard des lois appliquées par l'ASFC dans les domaines du fret et des mainlevées. La vérification peut être effectuée sous forme d'examens au hasard ou ciblés, d'examen de renseignements commerciaux et de vérifications ou d'enquêtes périodiques sur place. Le programme de vérification de l'observation comprend des analyses et il élabore des cibles précises dans les programmes du fret et des mainlevées comme les descriptions erronées, les pièces jointes et les autres ministères du gouvernement ainsi que les mesures et rapports sur les niveaux d'observation dans ces domaines. En surveillant les cibles en question, la portée de l'observation ou de l'inobservation est évaluée. Ces responsabilités ne font pas partie du mandat de la Direction générale de l'exécution de la loi et, par conséquent, elles ne représentent pas des activités « d'exécution ».</p>
CONFESSION	CONFESSION
<p>A confession is a statement made by an accused person to an individual in authority that is self-incriminating with respect to the offence(s) for which the accused person is charged.</p>	<p>Déclaration que fait un accusé à une personne en autorité et dans laquelle il reconnaît avoir commis l'infraction ou les infractions dont il est accusé.</p>
CONSULAR OFFICER	FONCTIONNAIRE CONSULAIRE
<p>Any person, including the head of a consular post, who is entrusted with the exercise of consular functions, is considered a consular officer. However, there are two types of consular officers; one of which is the "honorary consular officer" (i.e., Honorary Consul Generals, Honorary Vice-Consuls, and Honorary Consular Agents). An honorary consular officer who is not entitled to any clearance privileges other than personal exemption tariff item numbers of heading 98.04 of the</p>	<p>Toute personne, y compris le chef d'un poste consulaire, qui est engagée dans l'exercice de fonctions consulaires est considérée à titre de fonctionnaire consulaire. Toutefois, il existe deux types de fonctionnaires consulaires; l'un est composé de « fonctionnaires consulaires honoraires » (c.-à-d. les consuls généraux honoraires, les vice-consuls honoraires et les fonctionnaires consulaires honoraires). Un fonctionnaire consulaire honoraire n'est pas admissible aux privilèges de</p>

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<i>Customs Tariff.</i> Honorary consular officers are Canadian citizens or permanent residents of Canada.	dédouanement autres que celui accordé pour les exemptions personnelles en vertu des numéros tarifaires de la position 98.04 du <i>Tarif des douanes</i> . Les fonctionnaires consulaires honoraires sont des citoyens canadiens ou des résidents permanents du Canada.
CONSULAR POST	POSTE CONSULAIRE
A consular post promotes its' states economic, cultural, trade, and tourism-related interests and may be located in one or more Canadian cities. There are four levels of consular posts: consulate general, consulate, vice-consulate, and consular agency.	Un poste consulaire doit promouvoir les intérêts économiques, culturels, commerciaux et touristiques de son pays et il peut être situé dans une ou plusieurs villes canadiennes. Il existe quatre niveaux de postes consulaires, soit le consulat général, le consulat, le vice-consulat et l'agence consulaire.
CONTRABAND	CONTREBANDE
Prohibited or controlled goods (e.g. drugs, child pornography, firearms, strategic exports and embargoed goods, hazardous waste, alcohol, tobacco) illegally imported or exported that can cause significant economic or social harm to Canada or Canadians are considered contraband.	Les marchandises prohibées ou contrôlées (p. ex. drogues, pornographie juvénile, armes à feu, exportations stratégiques et marchandises soumises à un embargo, déchets dangereux, alcool, tabac) importées ou exportées illégalement qui peuvent entraîner des dommages économiques ou sociaux importants au Canada ou aux Canadiens sont considérées comme étant des marchandises de contrebande.
CONTRAVENTION	INFRACTION
A breach, violation, or infringement of an Act or regulation is termed a contravention.	Toute contravention, infraction ou violation à l'égard d'une loi ou d'un règlement est considérée à titre d'infraction.
CONTROLLED DELIVERY	LIVRAISON CONTRÔLÉE
A controlled delivery is a formal undertaking between CBSA and other law enforcement agencies, which, after an interdiction by CBSA, permits the furtherance of the contraband (under the direction and control of an appropriate law enforcement agency), to the point of identification and arrest of persons involved in the importation/exportation and	La livraison contrôlée est une opération à laquelle participent l'ASFC et d'autres organismes d'exécution de la loi et qui, suite à une mesure de répression de la part des douanes, permet d'acheminer la contrebande (sous la direction et le contrôle d'un organisme d'exécution compétent) jusqu'à l'endroit où il sera possible d'identifier et d'arrêter toutes les

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distribution of that contraband.	personnes impliquées dans l'importation, l'exportation et la distribution des marchandises de contrebande.
CONTROLLED SUBSTANCE	SUBSTANCE CONTRÔLÉE
A controlled substance is a substance included in Schedule I, II, III, IV or V of the <i>Controlled Drugs and Substances Act</i> .	Une substance contrôlée est une substance inscrite aux annexes I, II, III, IV ou V de la <i>Loi réglementant certaines drogues et autres substances</i> .
CONVEYANCE	VÉHICULE
A conveyance is any vehicle, aircraft, vessel, or other contrivance that is used to move persons or goods.	Véhicule à moteur, aéronef, embarcation ou tout autre moyen servant à transporter des personnes ou des marchandises.
COUNSEL	CONSEILLER JURIDIQUE
A Barrister or Solicitor authorized by the law to perform duties in relation to legal proceedings is considered "counsel". An individual who is detained or arrested by CBSA has the right to counsel.	Un avocat ou un procureur autorisé par la loi à exécuter des tâches liées à des instances judiciaires est considéré à titre de « conseiller juridique ». Toute personne détenue ou arrêtée par l'ASFC a droit à un avocat.
COUNTERFEIT CURRENCY	ESPÈCES CONTREFAITES
If you would like to know more about counterfeit currency visit the Bank of Canada web site (http://www.bankofcanada.ca/en/banknotes/counterfeit/index.html)	Si vous voulez en savoir plus sur la contrefaçon, visitez le site de la Banque du Canada à l'adresse suivante : (http://www.banqueducanada.ca/fr/billets/contrefacon/index.html)
COURIER	MESSAGER
A courier is a commercial carrier that is engaged in scheduled international transportation of shipments of goods other than goods imported by mail.	S'entend d'un messager commercial qui offre un service de transport international régulier, exception faite des marchandises importées par la poste.
CRIMINAL ACTION	ACTION CRIMINELLE
An action brought about to punish a person for a violation of a Federal Statute (a criminal offence). Generally, the procedure whereby a person is charged with a criminal offence and brought before the courts.	Procédure intentée pour punir une personne d'une infraction à une loi fédérale (acte criminel). En règle générale, il s'agit d'une procédure par laquelle une personne est poursuivie en justice pour infraction criminelle.

CRIMINAL INVESTIGATIONS INFORMATION MANAGEMENT SYSTEM (CIIMS)	SYSTÈME DE GESTION DE L'INFORMATION DES ENQUÊTES DES DOUANES (SGIED)
CIIMS is a case management system used by CBSA Investigators to track the progress of criminal investigations.	Le SGIED est un système de gestion de cas qui est utilisé par les enquêteurs de l'ASFC pour faire le suivi des progrès réalisés dans les enquêtes criminelles.
CRIMINAL OFFENCE	INFRACTION CRIMINELLE
A violation of any of the Federal Statutes of Canada (criminal law), whether it is described as an indictable offence or one punishable on summary conviction. Offences under a Provincial or Territorial Law are not criminal offences.	Infraction à une des lois du Parlement du Canada (droit pénal) décrite comme une infraction punissable par mise en accusation ou comme une infraction punissable par procédure sommaire. Une infraction sous les lois provinciales ou territoriales n'est pas un acte criminel.
CROSS BORDER CURRENCY REPORTING FORMS	LES FORMULAIRES DES RAPPORTS DMTE
E677 - Cross-Border Currency or Monetary instruments Report - Individual: The E677 is to be used when an individual crosses the border and is carrying Currency and/or Monetary Instruments which is their own.	E677 - Déclaration des mouvements transfrontaliers d'espèces et d'effets - Individu : Le formulaire E677 vise les personnes qui traversent la frontière en transportant des espèces ou des effets qui leur appartiennent.
E667 - Cross-Border Currency or Monetary Instruments Report - General: The E667 is used when an individual is carrying Currency and/or Monetary Instruments on behalf of another person or entity, or when sending currency and/or monetary instruments by mail.	E667 - Déclaration des mouvements transfrontaliers d'espèces et d'effets - généralités : Le formulaire E667 vise les personnes qui transportent des espèces ou des effets pour une autre personne ou entité, ou qui les envoient par poste.
E668 - Cross-Border Currency or Monetary Instruments Report - Couriers: The E668 is used when Currency and/or Monetary Instruments arrives via a commercial carrier (driver) or commercial shipment (cargo) other than postal.	E668 - Déclaration des mouvements transfrontaliers d'espèces et d'effets - Coursiers : Le formulaire E668 permet de déclarer les espèces ou les effets envoyés par l'entremise de transporteurs (conducteurs) ou d'envois commerciaux (cargo) autres que la poste.
CURRENCY	ESPÈCES
"Currency" includes all foreign and domestic banknotes and circulation coins.	Le terme « espèces » englobe toutes les pièces de monnaie et les billets de banque canadiens et étrangers en circulation au pays.

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CUSTODY ORDER	ORDONNANCE DE GARDE
A court order giving permanent or temporary legal custody of a minor to a parent or guardian is considered a custody order.	Ordonnance rendue par un tribunal afin d'accorder la garde légale temporaire ou permanente à un parent ou à un tuteur.
CUSTOMS COMMERCIAL SYSTEM (CCS)	SYSTÈME DES DOUANES DU SECTEUR COMMERCIAL (SDSC)
A national mainframe system used primarily to record the presentation, accounting and adjustment of the B3 Canada Customs Coding forms or their electronic equivalent. CCS is composed of numerous subsystems.	Système national central qui sert principalement à enregistrer les présentations, les déclarations en détail et les rajustements du formulaire de codage B3 ou de ses équivalents de Douanes Canada. Le SDSC est composé de nombreux sous-systèmes.
CUSTOMS CONTROLLED AREA	ZONE DE CONTRÔLE DES DOUANES
A Customs Controlled Area (CCA) is a designated area close to or associated with the border, where domestic travellers or workers may be in contact with international travellers and/or goods not yet cleared by the Canada Border Services Agency (CBSA). Access to these areas may be restricted. Presentation of persons and reporting of goods may be required upon exiting. Some examples of CCA's include the area around an aircraft or vessel that has arrived in or is about to leave Canada, the area around recently imported goods or goods about to be exported from Canada, as well as certain holding and departure areas at international airports.	Une zone de contrôle des douanes (ZCD) est une zone désignée qui se trouve près de la frontière, ou qui y est associée, et où les voyageurs ou les travailleurs nationaux peuvent être en contact avec des marchandises et/ou des voyageurs internationaux qui n'ont pas encore été traités par l'Agence des services frontaliers du Canada (ASFC). L'accès à de telles zones peut être limité. La présentation des personnes et la déclaration des marchandises peuvent être exigées à la sortie. D'autres exemples de ZCD comprennent la zone entourant un aéronef ou une embarcation qui vient d'arriver au Canada ou qui s'apprête à en sortir, la zone autour de marchandises récemment importées au Canada ou qui s'apprêtent à en être exportées, ainsi que certaines zones de retenue et de départ dans les aéroports internationaux.
CUSTOMS FRAUD	FRAUDE DOUANIÈRE
Customs fraud is the commission or omission of an act knowingly, which can result in a criminal charge being laid under the <i>Customs Act</i> . One or a series of acts, transactions, schemes, arrangements, or	La fraude douanière est le fait de poser un acte ou d'omettre de poser un acte sciemment, ce qui peut entraîner que des accusations au criminel soient portées en vertu de la <i>Loi sur les douanes</i> . Lorsque

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devices, whereby duties or taxes owing are fraudulently reduced or evaded, may constitute fraud. It usually involves the deliberate evasion of duties or taxes by smuggling goods for personal or commercial use, falsifying documentation, misdescribing or undervaluing goods, or tampering with in-bond goods. Customs fraud may also be committed by importing or exporting prohibited, restricted, or controlled goods into or out of Canada without the required permits or in contravention of another government department's legislation that is administered by the CBSA.	des actions, des transactions, des projets, des dispositions ou des dispositifs sont utilisés afin de permettre la réduction ou l'évasion frauduleuse de droits ou de taxes dues, il peut s'agir d'une fraude. En règle générale, il s'agit d'une évasion de droits ou de taxes au moyen de la contrebande de marchandises à des fins personnelles ou commerciales, de la falsification de documents, d'une description erronée ou d'une sous-évaluation des marchandises ou de l'altération de marchandises sous douane. Une fraude douanière peut également être commise en important ou en exportant des marchandises prohibées, restreintes ou contrôlées au Canada ou du Canada sans l'obtention préalable des permis nécessaires ou en contrevenant à une loi d'un autre ministère, appliquée par l'ASFC.
CUSTOMS INFORMATION	RENSEIGNEMENT DOUANIER
Any information obtained by or on behalf of the Minister of Public Safety and Emergency Preparedness for the purposes of the <i>Customs Act</i> or the <i>Customs Tariff</i> , or information prepared from such information. It includes any oral statement, book, record, writing, or other document in any form, including electronic form, obtained by or on behalf of the Minister for such purposes. It also includes information obtained by an authorized person for the purposes of carrying out an agreement made under Subsection 147.1(3) of the <i>Customs Act</i> . Section 107 of the <i>Customs Act</i> regulates the disclosure, including provision and use, of CBSA information.	Tout renseignement obtenu par la ministre de la Sécurité publique et Protection civile ou en son nom aux fins de la <i>Loi sur les douanes</i> ou du <i>Tarif des douanes</i> , ou toute information préparée pour de tels renseignements. Ceci comprend toute déclaration verbale, livre, registre, écrit ou tout autre document sous n'importe quelle forme, y compris sous forme électronique, obtenu par la ministre ou en son nom à de telles fins. Ceci comprend également les renseignements obtenus par une personne autorisée afin de donner suite à une entente en vertu du paragraphe 147.1(3) de la <i>Loi sur les douanes</i> . L'article 107 de la <i>Loi sur les douanes</i> régit la communication des renseignements de l'ASFC, y compris leur fourniture et leur utilisation.
CUSTOMS NOTICE OF INSPECTION	AVIS D'INSPECTION DOUANIÈRE
CBSA form number K158 is used to notify airline representatives when certain types of CBSA examinations have been conducted.	Le formulaire K158 de l'ASFC est utilisé afin d'informer des représentants de compagnies aériennes lorsque certains types d'examen de l'ASFC ont été effectués.

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CUSTOMS OFFICE	BUREAU DE DOUANE
A Customs office is an area designated by the Minister, inside or outside of Canada, generally for business relating to customs as per section 5 and subsection 2(1) of the <i>Customs Act</i> .	Un bureau de douane est un emplacement établi par le ministre, à l'intérieur ou à l'extérieur du Canada, en règle générale afin d'y traiter des opérations liées aux douanes, en vertu de l'article 5 et du paragraphe 2(1) de la <i>Loi sur les douanes</i> .
CUSTOMS SELF ASSESSMENT (CSA)	PROGRAMME D'AUTOCOTISATION DES DOUANES (PAD)
CSA is a CBSA program that streamlines the import process and furthers self-assessment of reported trade data, payment of duties, and subsequent adjustment using the internal business systems of CBSA clients.	Le PAD est un programme de l'ASFC qui uniformise le processus d'importation et qui étend la portée de l'autoévaluation des données commerciales présentées, du paiement des droits et des rajustements ultérieurs au moyen des systèmes commerciaux internes des clients de l'ASFC.
DANGEROUS GOODS	MATIÈRES DANGEREUSES
Dangerous goods are defined under the <i>Transportation of Dangerous Goods Act 1992</i> , as any product, substance, or organism included by its nature or in the <i>TDG Regulations</i> that falls within one of the following nine classes:	Aux termes de la <i>Loi sur le transport des matières dangereuses de 1992</i> , on définit les matières dangereuses comme des produits, substances ou organismes compris d'après leur nature ou figurant dans les 9 classes ci-dessous du RTMD :
Class 1 Explosives Class 2 Gases Class 3 Flammable and combustible liquids Class 4 Flammable and reactive solids Class 5 Oxidizing substances Class 6 Poisonous/infectious substances Class 7 Radioactive materials Class 8 Corrosives Class 9 Miscellaneous (environmentally harmful) substances.	Classe 1 – Explosifs Classe 2 – Gaz Classe 3 – Liquides inflammables et combustibles Classe 4 – Solides inflammables et réactifs Classe 5 – Substances oxydantes Classe 6 – Substances toxiques/infectieuses Classe 7 – Matières radioactives Classe 8 – Matières corrosives Classe 9 – Diverses substances (nocives pour l'environnement)
DEBTOR	DÉBITEUR
For customs purposes, a debtor is a person liable to pay an amount owing or payable in accordance with the <i>Customs Act</i> . A person is not generally considered	Aux fins des douanes, un débiteur est une personne responsable du paiement d'une somme due ou à payer conformément à la <i>Loi sur les douanes</i> . En règle générale,

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a debtor until the debt has become overdue and collection action is taking place.	une personne n'est pas considérée comme un débiteur avant que la dette ne soit en souffrance et que des mesures de recouvrement n'aient été prises.
DEDUCTIVE REASONING	RAISONNEMENT DÉDUCTIF
Deductive reasoning is the process of verifying established rules, indicators, or scenarios against received targeting information or data to gain enough knowledge to determine a conclusion, if a target should be created or not.	Processus consistant à analyser les renseignements reçus sur le ciblage à la lumière des règles, des indicateurs ou des scénarios afin de recueillir suffisamment de faits pour parvenir à une conclusion quant à la nécessité de créer ou non une cible.
DESIGNATED OFFICER	AGENT DÉSIGNÉ
A Border Services Officer who is designated by the Minister pursuant to subsection 163.4 of the <i>Customs Act</i> . Subsection 163.5 provides a designated Border Services Officer with the powers and obligations afforded to peace officers for the purposes of enforcing sections 495 to 497 and 254 and 256 of the <i>Criminal Code</i> .	Un agent des services frontaliers qui est désigné par le ministre en vertu du paragraphe 163.4 de la <i>Loi sur les douanes</i> . Le paragraphe 163.5 fournit aux agents des services frontaliers désignés des pouvoirs et des fonctions qui sont conférés à des agents de paix aux fins d'appliquer les parties 495 à 497, 254 et 256 du <i>Code criminel</i> .
DETENTION	DÉTENTION
Detention is the act of depriving an individual of his or her liberty. For Customs purposes is the act of keeping an individual within the confines of the CBSA area once all normal processing has been completed. The purpose is to verify legislative requirements have been met. All legal rights must have been engaged.	La détention est le fait de priver une personne de sa liberté. Aux fins des douanes, il s'agit de l'acte qui consiste à garder une personne, une fois que tout le traitement douanier normal est conclu, à l'intérieur d'une zone de l'ASFC afin de vérifier que toutes les conditions légales ont été remplies. Tous les droits reconnus par la loi doivent avoir été respectés.
DETERRENT	DISSUASION
Any disincentive to future non-compliance is considered a deterrent.	Tout moyen de dissuasion à l'égard de mesures d'inobservation futures.
DIPLOMATIC AGENT	AGENT DIPLOMATIQUE
The head of a mission or member of the diplomatic staff of the mission is termed a diplomatic agent.	Le chef de la mission ou membre du personnel diplomatique de la mission.

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DIRECT QUESTIONING	INTERROGATOIRE DIRECT
Direct questioning is a forthright questioning technique utilized by officers involved in specialized enforcement activities such as roving or during secondary examination. Direct questioning techniques are used to elicit behavioural indicators to confirm or deny officers suspicions arising from observations of the traveller during any part of the customs process.	Un interrogatoire direct est une technique d'interrogation franche utilisée par les agents responsables d'activités d'exécution spécialisées comme le patrouillage, ou alors au cours d'un examen secondaire. Les techniques d'interrogatoire direct sont utilisées afin d'obtenir des indicateurs de comportement servant à confirmer ou à démentir les soupçons des agents découlant de l'observation des voyageurs au cours du processus douanier.
DISCLOSURE	DIVULGATION
The authorized release of information through approved channels is termed "disclosure".	La communication autorisée de renseignements par la filière approuvée.
DRUG COURIER	PASSEUR DE DROGUE
A person who transports illicit drugs secreted in baggage, a conveyance, or goods, or in or on their person.	Une personne qui transporte des drogues illicites dissimulées dans des bagages, dans un moyen de transport, dans des marchandises ou sur lui-même.
DRUGS	DROGUES
Drugs are natural, chemically altered, and chemical substances that are taken to alter the mood, behaviour, judgement, physical senses, and/or mental perceptions and are prohibited entry into Canada. For CBSA enforcement purposes, the term 'drugs' includes narcotics.	Les drogues sont des substances naturelles, modifiées chimiquement ou chimiques qui sont prises afin de modifier l'humeur, le comportement, le jugement, les sensations physiques et/ou les perceptions mentales et leur entrée au Canada est prohibée. Aux fins de l'exécution de l'ASFC, le terme « drogues » comprend les stupéfiants.
DUAL PROCEDURE OR HYBRID OFFENCE	INFRACTION MIXTE
An offence that can be prosecuted by way of indictment or summary conviction. Hybrid offences are considered indictable until the Crown makes its election	Une infraction qui peut être poursuivie par voie de mise en accusation ou par procédure sommaire. Les infractions mixtes sont considérées comme des actes criminels jusqu'à ce que la couronne choisisse.

DUE DILIGENCE	DILIGENCE RAISONNABLE
Due diligence is the defence that a person has taken all reasonable care to comply with legislation.	Moyen de défense que peut invoquer une personne qui a fait tous les efforts raisonnables pour se conformer à la loi.
ELEMENT OF A CRIMINAL OFFENCE	ÉLÉMENTS D'UNE INFRACTION CRIMINELLE
The elements of an offence are those factors, which must be proven for a conviction. The elements of each offence are found in the wording of the particular offence section or the section describing the offence. All of the factors must exist for an offence to have taken place. Every charge laid under a statute must be based on the elements, which comprise that offence. Taken together these elements constitute the crime. In order to convict the accused each element must be proved to the satisfaction of the justice, judge or jury. <i>Actus reus</i> and <i>mens rea</i> are two constant elements, which must be proved in each case. The other elements are the essential parts or pieces of the offence which, when combined create the offence.	Les éléments d'une infraction sont les facteurs qui doivent être prouvés pour qu'il y ait déclaration de culpabilité. Les éléments de chaque infraction se trouvent dans l'énoncé décrivant cette infraction. Tous les facteurs doivent être présents pour qu'une infraction ait été commise. Chaque accusation portée en vertu d'une loi doit reposer sur les éléments qui constituent cette infraction. Ensemble, ces éléments constituent l'acte criminel. Chaque élément doit être prouvé à la satisfaction du juge ou du jury pour que l'accusé puisse être reconnu coupable. L' <i>actus reus</i> et la <i>mens rea</i> sont deux éléments constants qui doivent être prouvés dans chaque cas. Les autres éléments sont les parties ou les pièces essentielles de l'infraction qui, lorsqu'elles sont combinées, constituent l'infraction.
ENFORCEMENT	EXÉCUTION
Enforcement is the act of compelling adherence to the law. Enforcement represents an essential tool in ensuring we meet our goal of compliance. It includes a wide range of activities (examination, audit, investigation, seizure prosecution, etc.) designed to detect, correct and deter non-compliance.	L'exécution signifie le respect obligatoire de la loi. L'exécution représente un outil essentiel afin de nous permettre d'atteindre notre objectif en matière d'observation. Elle comprend une vaste gamme d'activités (examens, vérifications, enquêtes, saisies, poursuites, etc.) conçues afin de détecter, de corriger et de prévenir l'inobservation.
ENFORCEMENT ACTION	APPLICATION DE LA LOI
In the customs environment, enforcement action refers to the levying of a sanction, seizing goods, ascertaining forfeiture, detaining or arresting a person, or any like occurrence.	En matière de douanes, mesure d'exécution comprenant la perception d'une pénalité, la saisie de marchandises, une confiscation compensatoire, la détention ou l'arrestation d'une personne

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	ou tout autre événement semblable.
EVIDENCE	PREUVE
Evidence is that which serves to prove or disprove a belief or a conclusion. It is offered to prove the existence or non-existence of a fact. Evidence in criminal matters is whatever serves as proof that the person charged with an offence is either guilty or innocent. Evidence can be oral, written or can consist of physical exhibits (such as the goods seized, testimony, records, documents, material objects, etc)	La preuve est ce qui sert à prouver ou à infirmer une croyance ou une conclusion. Elle sert à prouver l'existence ou la non-existence d'un fait. La preuve dans les affaires criminelles est ce qui sert à prouver qu'une personne accusée d'une infraction est coupable ou innocente. La preuve peut être orale ou écrite ou elle peut se composer de pièces matérielles (p. ex. des marchandises saisies, des témoignages, des registres, des documents, des objets matériels, etc.).
EXAMINATION	EXAMEN
An examination is an inspection applied to goods, baggage, and conveyances for the purpose of appraisal or classification, to confirm a declaration made concerning goods, baggage, and conveyances, or to search for contraband or unreported or improperly reported goods. This includes the inspection of the contents of a traveller's pockets, purse, or wallet. An examination also includes questioning of a traveller or importer to elicit or confirm a declaration.	Un examen comprend l'inspection de marchandises, de bagages et de moyens de transport qui a pour objet l'appréciation ou le classement dans le but de confirmer une déclaration faite à leur égard ou de découvrir des marchandises passées en contrebande, non déclarées ou incorrectement déclarées. Elle comprend de plus l'inspection des poches, du sac à main ou du portefeuille du voyageur. Cette définition comprend également l'interrogation d'un voyageur afin de clarifier sa déclaration ou de la confirmer.
EXCULPATORY STATEMENT	DÉCLARATION DISCULPATOIRE
A statement that tends to justify, excuse, or clear an accused from alleged fault or guilt is an exculpatory statement.	Déclaration qui tend à justifier, excuser ou exonérer l'accusé de la faute ou de l'infraction qui lui est reprochée
EXHIBIT	PIÈCE
Physical or tangible evidence which has been admitted into court as evidence.	Élément physique ou tangible admis en cour à titre de preuve.
FACILITY FOR INFORMATION RETRIEVAL MANAGEMENT (FIRM)	SYSTÈME DE GESTION DE L'EXTRACTION DE RENSEIGNEMENTS (SGER)
FIRM is a sub-system of CCS.	Le SGER est un sous-système du SDSC.

FIELD OPERATIONAL SUPPORT SYSTEM (FOSS)	SYSTÈME DE SOUTIEN DES OPÉRATIONS DES BUREAUX LOCAUX (SSOBL)
FOSS is the legal system of record for the administration of the Immigration and Refugee Protection Act. It is the official document management system containing all document related evidence of the immigration client continuum and from which secure documents such as Temporary Resident or Permanent Resident Visas are printed.	Le SSOBL est le système juridique de référence utilisé pour appliquer <i>Loi sur l'immigration et la protection des réfugiés</i> . Il s'agit du système officiel de gestion de documents qui contient tous les éléments de preuve à l'appui du traitement des clients de l'immigration et qui permet d'imprimer des documents sécurisés comme les visas de résident temporaire ou permanent.
FINDS COMMITTING	TROUVER EN TRAIN DE COMMETTRE
Actually seeing an offence being committed.	Voir une personne en train de commettre une infraction.
FINTRAC	CANAFE
<p>FINTRAC is an acronym for the Financial Transaction and Reports Analysis Centre of Canada, which was created by Bill C-22.</p> <p>The Centre, on the basis of their analysis and assessment can only disclose designated information where there are reasonable grounds to suspect the information is relevant to terrorist financing or a money laundering investigation and prosecution.</p> <p>The following organizations may receive "designated information" directly and may receive a full intelligence analysis report upon a production order.</p>	<p>CANAFE est un acronyme qui signifie Centre d'analyse des opérations et déclarations financières du Canada; le projet de loi C-22 est la raison de sa création.</p> <p>Le Centre, à la lumière de son analyse et de son appréciation, est en mesure de divulguer des renseignements désignés uniquement lorsqu'il y a des motifs raisonnables de soupçonner que les renseignements seraient pertinents aux fins d'enquête ou de poursuite relativement au financement d'activités terroristes ou au recyclage des produits de la criminalité.</p> <p>Les organisations suivantes pourront obtenir des renseignements désignés directement ainsi qu'un rapport d'analyse complet du renseignement si une ordonnance de production est émise.</p>
a) The appropriate police force: FINTRAC must disclose, "designated information" where there is reasonable grounds to suspect, based on the analysis of the information that it would be relevant to investigating or	a) Forces policières compétentes : Le CANAFE doit divulguer des renseignements désignés lorsqu'il existe des motifs raisonnables de soupçonner, selon l'analyse des renseignements, qu'ils seraient utiles aux fins d'enquête ou de

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prosecuting a money laundering offence or terrorist activity.	poursuite relativement à une infraction de recyclage des produits de la criminalité ou de financement d'activités terroristes.
b) The Canada Border Services Agency (CBSA): FINTRAC must disclose, "designated information" where there is reasonable grounds to suspect based on the analysis of the information that the information is relevant to both money laundering offence and the evasion of duties and taxes.	b) Agence des services frontaliers Canada (ASFC) : Le CANAFE doit divulguer des renseignements désignés lorsqu'il existe des motifs raisonnables de soupçonner, selon l'analyse des renseignements, qu'il seraient utiles à la fois à une infraction de recyclage des produits de la criminalité et pour évasion fiscale.
c) The Canadian Security Intelligence Service (CSIS): FINTRAC must disclose, "designated information" where there is reasonable grounds to suspect, based on its analysis of the information that the information is relevant to both money laundering offence and a threat to the security of Canada.	c) Service canadien du renseignement de sécurité (SCRS) : Le CANAFE doit divulguer des renseignements désignés lorsqu'il existe des motifs raisonnables de soupçonner, selon l'analyse des renseignements, qu'ils seraient utiles à la fois au recyclage des produits de la criminalité et représentent une menace envers la sécurité du Canada.
d) The Department of Citizenship and Immigration Canada (CIC): FINTRAC must disclose, "designated information" where there is reasonable grounds to suspect, based on its analysis of the information is relevant to both money laundering offence and an <i>Immigration Act</i> offence.	d) Ministère de la Citoyenneté et de l'Immigration Canada (CIC) : Le CANAFE doit divulguer des renseignements désignés lorsqu'il existe des motifs raisonnables de soupçonner, selon l'analyse des renseignements, qu'ils seraient utiles à la fois à une infraction de recyclage des produits de la criminalité et à une infraction de la Loi sur l'immigration.
FIREARMS AND WEAPONS	ARMES À FEU ET ARMES
A weapon means anything used, designed to be used or intended for use:	Une arme s'entend de toute chose utilisée ou conçue pour être utilisée ou qu'une personne entend utiliser
a) in causing death or injury to any person, or	a) soit pour tuer ou blesser quelqu'un;
b) for the purpose of threatening or intimidating any person, and;	b) soit pour menacer ou intimider quelqu'un;

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c) without restricting the generality of the foregoing, includes any firearm as defined in Section 2 of the <i>Criminal Code</i> .	c) sans limiter la généralité de ce qui précède, cette définition comprend toute arme à feu au sens de l'article 2 du <i>Code criminel</i> .
A prohibited weapon means any weapon, other than a firearm, that is prescribed to be a prohibited weapon (e.g. a knife that has a blade that opens automatically by gravity or centrifugal force or by hand pressure applied to a button, spring or other device in or attached to the handle of the knife).	Une arme prohibée s'entend de toute arme, qui n'est pas une arme à feu, mais qui est désignée comme telle par règlement (par ex. un couteau dont la lame s'ouvre automatiquement par gravité ou force centrifuge ou par pression manuelle sur un bouton, un ressort ou un autre dispositif incorporé ou attaché au manche);
Note: For a complete list of prohibited weapons, refer to Appendix G of D19 -13 - 2 Importing and Exporting Firearms, Weapons, and Devices.	Note : Voir la liste complète des armes prohibées à l'annexe G du D19-13-2 Importation et exportation d'armes à feu, d'autres armes et de dispositifs.
A firearm means any barrelled weapon from which any shot, bullet or other projectile can be discharged and that is capable of causing serious bodily injury or death to a person, and includes any frame or receiver of such a barrelled weapon and anything that can be adapted for use as a firearm.	Arme à feu s'entend de toute arme susceptible, grâce à un canon qui permet de tirer du plomb, des balles ou tout autre projectile, d'infliger des lésions corporelles graves ou la mort à une personne, y compris une carcasse ou une boîte de culasse, ainsi que toute chose pouvant être modifiée pour être utilisée comme telle.
A prohibited firearm means:	Une arme à feu prohibée s'entend de :
a) a handgun that:	a) une arme de poing :
i. has a barrel equal to or less than 105 mm (approximately 4.1 inches) in length; or	i. pourvue d'un canon dont la longueur ne dépasse pas 105 mm (environ 4,1 po); ou
i. is less than 660 mm (approximately 25.74 inches) in length; or	ii. la longueur totale de l'arme soit inférieure à 660 mm (environ 25,74 po);ou

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ii. is 660 mm (approximately 25.74 inches) or more in length and has a barrel less than 457 mm (approximately 17.82 inches) in length;	iii. la longueur totale soit inférieure à 660 mm (environ 25,74 po) et la longueur du canon soit de moins de 457 mm (environ 17,82 po);
b) an automatic firearm, whether or not it has been altered to discharge only one projectile with one pressure of the trigger; or	b) une arme automatique, même si elle a été ou non modifiée pour ne tirer qu'un seul projectile à chaque pression de la détente;
c) any firearm that is prescribed to be a prohibited firearm.	c) une arme à feu désignée comme telle par règlement.
Note: For a complete list of prohibited weapons, refer to Appendix G of D19-13-2 Importing and Exporting Firearms, Weapons, and Devices.	Note : Voir la liste complète des armes prohibées à l'annexe G du D19-13-2 Importation et exportation d'armes à feu, d'autres armes et de dispositifs.
A restricted firearm means:	Une arme à feu à autorisation restreinte s'entend de :
a) a handgun that is not a prohibited firearm;	a) toute arme de poing qui n'est pas une arme à feu prohibée;
b) a firearm that:	b) toute arme à feu
i. is not a prohibited firearm;	i. qui n'est pas une arme à feu prohibée;
ii. has a barrel less than 470 mm (approximately 18.33 inches) in length; and	ii. pourvue d'un canon de moins de 470 mm (environ 18,33 po) de longueur;

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iii. is capable of discharging centre-fire ammunition in a semi-automatic manner, e.g., semi-automatic pistols;	iii. qui peut tirer des munitions à percussion centrale d'une manière semi-automatique, par exemple un pistolet semi-automatique;
c) a firearm that is designed or adapted to be fired when reduced to a length of less than 660 mm (approximately 25.74 inches) by folding, telescoping, or otherwise; or	c) toute arme à feu conçue ou adaptée pour tirer lorsqu'elle est réduite à une longueur de moins de 660 mm (environ 25,74 po) par repliement, emboîtement ou autrement;
d) a firearm of any other kind that is prescribed to be a restricted firearm.	d) toute arme à feu désignée comme telle par règlement.
A prohibited device means:	Dispositif prohibé s'entend de :
a) any component or part of a weapon, or any accessory for use with a weapon that is prescribed to be a prohibited device;	a) un élément ou une pièce d'une arme, ou un accessoire destiné à être utilisé avec l'arme, désignés comme tel par règlement;
b) a handgun barrel that is equal to or less than 105 mm (approximately 4.1 inches) in length, but does not include any such handgun barrel that is prescribed where the handgun barrel is used in international sporting competitions governed by the rules of the International Shooting Union;	b) un canon d'une arme de poing, qui ne dépasse pas 105 mm (environ 4,1 po) de longueur, sauf celui désigné par règlement pour être utilisé dans des compétitions sportives internationales régies par les règles de l'Union internationale de tir;
c) a device or contrivance designed or intended to muffle or stop the sound or report of a firearm, e.g., silencers;	c) un appareil ou dispositif propre ou destiné à amortir ou à étouffer le son ou la détonation d'une arme à feu, par exemple un silencieux;
'd) large-capacity cartridge	'd) un chargeur grande capacité

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magazines prescribed by regulation. Generally, cartridge magazines are limited to five rounds for centre-fire semi-automatic rifles or shotguns and ten rounds for semi-automatic handguns, with certain exemptions for rare and valuable magazines; or	désigné comme tel par règlement. Les chargeurs se limitent généralement à cinq cartouches dans le cas des carabines ou fusils de chasse semi-automatiques utilisant des munitions à percussion centrale, et à dix cartouches pour les armes de poing semi-automatiques. Certaines exemptions s'appliquent pour les chargeurs rares et de valeur ou;
e) a replica firearm.	e) une réplique.
Note: For a complete list of prohibited devices, refer to Appendix G of D19-13-2 Importing and Exporting Firearms, Weapons, and Devices.	Note : Voir la liste complète des dispositifs prohibés à l'annexe G du D19-13-2 Importation et exportation d'armes à feu, d'autres armes et de dispositifs.
A replica firearm means any device that is designed or intended to exactly resemble, or to resemble with near precision, a firearm, and that it is not a firearm, but does not include any device that is designed or intended to exactly resemble, or to resemble with near precision, an antique firearm.	Une réplique d'arme à feu s'entend de tout objet, qui n'est pas une arme à feu, conçu de façon à en avoir l'apparence exacte, ou à la reproduire le plus fidèlement possible, ou auquel on a voulu donner cette apparence. La présente définition exclut tout autre objet conçu de façon à avoir l'apparence exacte d'une arme à feu historique, ou à la produire le plus fidèlement possible, ou auquel on a voulu donner cette apparence.
Note: For additional information on antique firearms, refer to Appendix G of D19-13-2 Importing and Exporting Firearms, Weapons, and Devices.	Note : Pour de plus amples renseignements sur les armes à feu historiques, voir l'annexe G du D19-13-2 Importation et exportation d'armes à feu, d'autres armes et de dispositifs.
Items not considered to be firearms are:	Armes réputées ne pas être des armes à feu :
a) any antique firearm;	a) toute arme à feu historique;

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b) any device designed and intended by the person in possession thereof, for use exclusively for signalling, notifying of distress or firing blank or stud cartridges, explosive-driven rivets or similar industrial projectiles;	b) tout instrument qui est conçu exclusivement pour envoyer un signal, appeler au secours ou tirer des cartouches à blanc ou pour tirer des cartouches d'ancrage, des rivets explosifs ou d'autres projectiles industriels, et est destiné par son possesseur à servir exclusivement à ces fins;
c) any shooting device designed and intended by the person in possession thereof, for use exclusively for slaughtering of domestic animals, tranquillizing animals, or discharging projectiles with lines attached to them;	c) tout instrument de tir qui est conçu exclusivement pour soit abattre les animaux domestiques, soit administrer des tranquillisants à des animaux, soit encore tirer des projectiles auxquels sont attachés des fils, et est destiné par son possesseur à servir exclusivement à ces fins;
d) any other barrelled weapon where it is proved that such weapon is not designed or adapted to discharge a shot, bullet or other missile at a muzzle velocity exceeding 152.4 m per second (500 feet per second) or to discharge a shot, bullet or other missile that is designed or adapted to attain a velocity exceeding 152.4 m per second (500 feet per second).	d) toute arme à canon lorsqu'il est prouvé qu'elle n'est ni conçue ni adaptée pour tirer du plomb, des balles ou tout autre projectile à une vitesse initiale de plus de 152,4 m (500 pi par seconde), et tirer du plomb, des balles ou tout autre projectile conçus ou adaptés pour atteindre une vitesse de plus de 152,4 m (500 pi) par seconde.
FIRST POINT OF OPERATIONAL INTERVENTION (RAIL)	PREMIER POINT D'INTERVENTION OPÉRATIONNELLE (FERROVIAIRE)
The First Point of Operational Intervention (FPOI) is defined as the first CBSA licenced facility after the rail conveyance has entered Canada that has the capacity to perform an examination of the goods.	Le Premier point d'intervention opérationnelle (PPIO) est défini comme la première installation agréée de l'ASFC après que le moyen de transport ferroviaire est entré au Canada et qui a la capacité pour procéder à un examen des marchandises.
FORCED COLLECTION/PAYMENT	PAIEMENT/PERCEPTION FORCÉ(E)
This term is often used in the customs	Ce terme est souvent utilisé dans le milieu

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environment to refer to the collection of duties and taxes lawfully owing on goods in lieu of taking seizure action when the importer did not voluntarily declare goods.	des douanes afin de se rapporter au fait de percevoir les droits et les taxes légalement exigibles à l'égard de marchandises au lieu de prendre des mesures de saisies sur ces marchandises lorsqu'un importateur n'a pas volontairement déclaré certaines marchandises.
FORCIBLE CONFINEMENT	SÉQUESTRATION
Forcible confinement is the act of depriving an individual of liberty to move from point to point. It differs from kidnapping, as kidnapping consists of taking control of the person and carrying them away from one point to another.	La séquestration consiste à priver une personne de la liberté de se déplacer d'un point à un autre. Elle diffère du kidnapping, qui consiste à prendre le contrôle d'une personne et de la transporter d'un point à un autre.
FOREIGN NATIONAL	RESSORTISSANT ÉTRANGER
A person who is not a Canadian citizen or permanent resident, including a stateless person is a foreign national.	Personne qui n'est pas un citoyen ni un résident permanent du Canada, y compris un apatride
FOREIGN REPRESENTATIVE	REPRÉSENTANT ÉTRANGER
Diplomatic, consular post and international organization personnel are foreign representatives.	Membre du personnel d'une mission consulaire ou d'une ambassade ou employé d'une organisation internationale.
FORFEIT	CONFISQUER
To forfeit property or money is to lose the right to ownership as a penalty for some infraction, error or omission of law. For customs purposes, a forfeiture of goods occurs at the time and place that a contravention of the <i>Customs Act</i> takes place and means forfeit to Her Majesty in right of Canada.	Le fait de retirer le droit de propriété à l'égard de biens ou d'argent à cause d'une infraction, d'une erreur ou d'une omission constituant une infraction à la loi. Aux fins des douanes, la confiscation de marchandises prend effet au moment et à l'endroit où se produit l'infraction à la <i>Loi sur les douanes</i> et les marchandises sont alors confisquées au profit de Sa Majesté du chef du Canada.
FRISK	FOUILLE-PALPATION
A frisk is a quick and minimally intrusive search for weapons performed for the health and safety of CBSA personnel and the public. A frisk will be performed on persons detained and/or arrested. For	Une fouille-palpation est une fouille rapide mais à intrusion minimale à la recherche d'armes et elle est effectuée afin d'assurer la santé et la sécurité des employés de l'ASFC et du public. Une fouille-palpation

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example, a detained and/or arrested person may be frisked prior to transport to a hospital for x-ray for ingested drugs, prior to the administration of an ABAL, or prior to a personal search.	est effectuée sur des personnes détenues et(ou) arrêtées. Par exemple, une personne détenue et(ou) arrêtée peut être soumise à une fouille-palpation avant d'être transportée à l'hôpital pour une radiographie afin de découvrir des drogues ingérées, avant l'application d'un AA ou avant de subir une fouille personnelle.
FULL OFFLOAD	DÉCHARGEMENT COMPLET
Full off-loads, where 76 to 100% of goods are removed from a conveyance, container, or truck, are mandatory for random exams and shipments that pose a high risk for contraband and may be required for other government departments or trade purposes as specified in the target request.	Un déchargement complet, qui signifie qu'un pourcentage variant de 76 à 100 % des marchandises sont déchargées d'un moyen de transport, d'un conteneur ou d'un camion, est obligatoire pour les examens aléatoires et pour les expéditions qui représentent un risque élevé de contrebande et il peut être exigé par un autre ministère ou nécessaire à des fins commerciales, tel que précisé dans la demande de ciblage.
FUNCTUS OFFICIO	FUNCTUS OFFICIO
This is a Latin term used to denote where an official or an agency has fulfilled their or its purpose and consequently has no further authority to act. In the adjudication process, once the Minister, or his delegate, has rendered a formal decision, they are without further power to change or rescind such decision.	Terme latin utilisé pour indiquer qu'un agent ou un organisme a rempli sa fonction et n'est donc plus autorisé à agir. Dans le processus d'arbitrage, une fois que le Ministre ou son délégué a rendu une décision officielle, il ne peut modifier ou annuler cette décision.
GLOBAL CASE MANAGEMENT SYSTEM (GCMS)	SYSTÈME MONDIAL DE GESTION DES CAS (SMGC)
The Global Case Management System (GCMS) is an integrated business system for delivering on the Citizenship and Immigration Canada (CIC) and the Canada Border Services Agency (CBSA) mandates and ensuring operational service effectiveness.	Le SMGC est un système de gestion opérationnelle intégré qui facilite l'exécution du mandat de Citoyenneté et Immigration Canada (CIC) et de l'Agence des services frontaliers du Canada (ASFC) et qui garantit l'efficacité des services opérationnels.
GUARDIAN	GARDIEN
Any person who has in law or in fact the custody or control of another person.	Toute personne qui, de fait ou en vertu de la loi, a la garde d'une autre personne ou exerce un contrôle sur elle.

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HABEAS CORPUS	HABEAS CORPUS
A writ directed to the person detaining another commanding him to produce the body of the person detained or arrested before a court or judge. The purpose is to test the legality of the detention or imprisonment.	Bref adressé à la personne qui détient une autre personne lui ordonnant d'amener la personne détenue ou arrêtée devant un tribunal ou un juge. L'objet est de vérifier la légalité de la détention ou de l'emprisonnement.
HATE PROPAGANDA	PROPAGANDE HAINEUSE
As defined in subsection 320(8) of the Criminal Code, hate propaganda consists of goods which advocate or promote hatred against an identifiable group distinguished by colour, race, religion, or ethnic origin. The importation of hate propaganda is prohibited under tariff item 9899.00.00.	Comme le stipule le paragraphe 320(8) du Code criminel, la propagande haineuse consiste en marchandises qui préconisent ou fomentent la haine contre un groupe identifiable qui se différencie des autres par la couleur, la race, la religion ou l'origine ethnique. L'importation de propagande haineuse est interdite en vertu du numéro tarifaire 9899.00.00.
HAZARDOUS WASTE	DÉCHETS DANGEREUX
Dangerous goods, that no longer are to be used for their intended purpose but are to be recycled or disposed, are considered hazardous waste. For example, gasoline is a dangerous good; stale or contaminated gasoline becomes a hazardous waste. Hazardous wastes are controlled under the <i>Canadian Environmental Protection Act</i> .	Les déchets dangereux sont des matières qui ne sont plus utilisées à leur fin propre et doivent être recyclées ou détruites. Par exemple, l'essence est un déchet dangereux; l'essence altérée ou contaminée devient un déchet dangereux. Les déchets dangereux sont contrôlés en vertu de la <i>Loi canadienne sur la protection de l'environnement</i> .
ICES/ORS REPORT	RAPPORT SIED/SRE
The ORS report is an integral part of the Integrated Customs Enforcement System and is directly linked to the Intelligence Management System (IMS). The officer's reports are sent electronically to the Regional Intelligence Division detailing the officer's suspicions and indicators based on an occurrence. The Intelligence Division will develop the information on the report received or keep it for future reference in the event that a similar event arises.	Le rapport SRE fait partie intégrante du Système intégré d'exécution des douanes tout en étant relié directement au Système de gestion des renseignements (SGR). Les rapports des agents sont envoyés électroniquement à la Division régionale des renseignements. On y trouve des explications sur les soupçons d'un agent relativement à une situation donnée. La Division des renseignements examinera de plus près les renseignements contenus dans le rapport ou conservera ce dernier aux fins de consultation éventuelle au cas où une situation semblable se présenterait.

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	de nouveau.
INCUHPATORY STATEMENT	DÉCLARATION INCRIMINANTE
A statement that tends to establish the guilt of an accused or from which their guilt may be inferred is inculpatory.	Déclaration qui tend à établir la culpabilité d'un accusé ou d'où la culpabilité peut être inférée
INDICATOR	INDICATEUR
A single piece of information, trend, abnormality, or inconsistency that when added to other information or data raises a concern to a targeting officer about the threat presented by a traveller or shipment. Indicators may be based on current or historical data, API/PNR information, ACI data, supplementary database information or other information.	Un élément unique d'information, une tendance, une anomalie ou une incohérence qui, conjugué à d'autres données, attire l'attention d'un agent de ciblage quant à la menace posée par un voyageur ou une expédition. Les indicateurs peuvent être fondés sur des données courantes ou historiques, des données IPV/DP, des données IPEC, des renseignements supplémentaires d'autres bases de données ou d'autres renseignements.
INDICTABLE OFFENCE	ACTE CRIMINEL
An indictable offence is any offence described in a Federal Statute which is stated to be an indictable offence or which is punishable by indictment. Indictable offences are generally more serious offences and prosecution by indictment is a lengthier and more complex court process involving preliminary hearings and trials before judge or a judge and jury. All offences under the <i>Customs Act</i> referred to in section 160 are dual procedure offences. All other offences are summary conviction offences. There are no purely indictable offences under the <i>Customs Act</i> .	Infraction décrite comme telle dans une loi fédérale ou qui est punissable par voie de mise en accusation. Les actes criminels constituent généralement des infractions graves, et la poursuite par mise en accusation est un processus judiciaire plus long et complexe impliquant la tenue d'une enquête préliminaire et un procès devant un juge ou un juge et jury. Toutes les infractions qui figurent à l'article 160 de la <i>Loi sur les douanes</i> sont des infractions mixtes. Toutes les autres infractions sont des infractions punissables par voie de déclaration sommaire de culpabilité. Il n'existe aucune infraction grave en vertu de la <i>Loi sur les douanes</i> .
INDUCEMENT	INCITATION
Any statement or action that leads the accused into believing that they will be treated better or worse depending on whether or not they make a statement.	Toute déclaration ou action qui incite l'accusé à croire que le fait de faire ou de ne pas faire une déclaration quelconque déterminera la façon dont il sera traité.

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INFORMANT	INFORMATEUR
An informant is a human source that has knowledge of criminal activity through association or personal involvement, and provides information to law enforcement agencies. Such sources often require the protection afforded by anonymity, and hence may not be compelled to become witnesses.	Toute personne qui a connaissance de certaines activités criminelles à cause de son association ou de sa participation personnelle à ces activités et qui fournit des renseignements à un organisme de police. Comme ces personnes ont souvent besoin de la protection garantie par l'anonymat, elles ne peuvent être tenues de témoigner.
IN PERSONAM	IN PERSONAM (PERSONNEL)
This is a term used to denote proceedings or actions that are taken against persons. Prosecution of individuals are "in personam" actions.	Terme qualifiant les procédures ou les actions prises contre des personnes. Les poursuites intentées contre des personnes constituent des actions personnelles ou in personam.
IN REM	IN REM (RÉEL)
A term used to denote proceedings or actions that are taken against things. Customs seizures are "in rem" actions.	Terme qualifiant les procédures ou les actions prises contre des choses. Les saisies aux douanes constituent des actions réelles ou in rem.
INSTRUMENT FOR ILLICIT DRUG USE	INSTRUMENT POUR L'UTILISATION DE DROGUES ILLICITES
These instruments are, as defined by section 462.1 of the <i>Criminal Code</i> , anything designed primarily or intended under the circumstances for consuming or to facilitate the consumption of an illicit drug.	Il s'agit, selon l'article 462.1 du <i>Code criminel</i> , de tout ce qui est destiné essentiellement ou en l'occurrence à la consommation d'une drogue illicite ou à la facilitation de sa consommation.
INTEGRATED BORDER QUERY (IBQ)	RECHERCHE INTÉGRÉE À LA FRONTIÈRE (RIF)
IBQ is an integrated, automated query tool that provides CBSA officers with access to multiple enforcement databases through a single interface. Historically, users of CBSA enforcement systems were required to log into multiple applications independent of each other, query for required information, view the information, and log off before repeating this process for all other applications they required	La RIF est un outil intégré et automatisé qui permet aux agents de l'ASFC d'accéder à différentes bases de données grâce à une interface unique. Par le passé, les utilisateurs des systèmes inhérents à l'exécution de la loi devaient se connecter à plusieurs applications autonomes pour chercher des renseignements et afficher les résultats, puis se déconnecter de ladite application

information from. Since 2006, IBQ has provided access to the Integrated Customs Enforcement System (ICES), Field Operations Support System (FOSS), Intelligent Management System (IMS), and the Canadian Police Information Centre (CPIC) simultaneously from a single screen, and has allowed officers to view fully detailed results in a consolidated summary. Users are currently able to conduct 15 different types of queries including person, business, address, telephone number, and conveyances.	avant de répéter le processus avec les autres applications. Depuis 2006, il est désormais possible d'accéder simultanément au Système intégré d'exécution des douanes (SIED), au Système de soutien des opérations des bureaux locaux (SSOBL), au Système de gestion des renseignements (SGR) et au Centre d'information de la police canadienne (CIPC) par l'intermédiaire de la RIF à partir d'un seul écran. L'outil permet aux agents de visualiser les résultats détaillés réunis dans un sommaire. À l'heure actuelle, les utilisateurs peuvent effectuer quinze types de recherches différentes à l'aide du nom d'une personne, d'une entreprise, d'une adresse, du numéro de téléphone et des moyens de transport.
INTEGRATED CUSTOMS SYSTEM (ICS)	SYSTÈME INTÉGRÉ DES DOUANES (SID)
The ICS is a common framework that encompasses both commercial and passenger-traveler streams and is comprised of a number of components (e.g. TITAN, PAXIS). ICS provides a single login and a common look and feel that allows for communication between its components.	Le Système intégré des douanes (SID) est un cadre commun qui englobe la filière des voyageurs et la filière commerciale et se compose d'un certain nombre d'éléments (p. ex. TITAN, SIPAX). Le SID permet une ouverture de session unique et sa présentation uniforme favorise la communication entre les composants.
INTEGRATED CUSTOMS ENFORCEMENT SYSTEM (ICES)	SYSTÈME INTÉGRÉ D'EXÉCUTION DES DOUANES (SIED)
The ICES is the repository for all enforcement-related information. This includes records of seizures and other enforcement actions, lookouts, intelligence and investigations cases and information from external sources relating to enforcement. ICES also includes information on traveller history and vehicle passage history which enables the CBSA to fully measure, evaluate and report on the performance of the enforcement program and its related activities. ICES is designed to support both the frontline Border Services Officers and the Intelligence and Investigations resources'	Le Système intégré d'exécution des douanes (SIED) est le référentiel de l'ensemble des renseignements inhérents à l'exécution de la loi. Au nombre des renseignements que renferme le SIED, notons les dossiers de saisie et d'autres mesures d'exécution de la loi, les avis de surveillance, les dossiers de renseignement et d'enquêtes, et l'information d'exécution recueillie auprès d'intervenants externes. Le SIED renferme également de l'information sur l'historique du voyageur et l'historique des passages. Cette information permet à l'ASFC de mesurer, d'évaluer et de présenter des

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ability to collect, analyze and disseminate the information necessary to identify and react to risk at the border.	rapports sur le rendement du programme d'exécution de la loi et les activités qui s'y rattachent. Le SIED est destiné à aider les agents des services frontaliers de première ligne et les employés du renseignement et des enquêtes à procéder à la collecte, à l'analyse et à la diffusion de l'information essentielle à l'identification et à la prise de décision à l'égard du risque à la frontière.
INTELLIGENCE	RENSEIGNEMENT
Intelligence data forewarns of activities that are likely to occur. Intelligence is evaluated and analyzed information; information that has been studied, correlated, interpreted, and confirmed.	Toute donnée qui avertit qu'un fait pourrait se produire. Le renseignement est l'évaluation et l'analyse d'informations, c'est-à-dire de l'information qui a été étudiée, mise en corrélation, et interprétée et confirmée.
The purpose of intelligence is to provide the user with a knowledge of events that are likely to occur which are counter to the user's aim. Intelligence serves a proactive function in the CBSA enforcement environment.	Le renseignement vise à faire connaître à l'utilisateur les événements qui pourraient se produire et qui vont à l'encontre de ses objectifs. Le renseignement a une fonction proactive dans le milieu de l'exécution de l'ASFC.
"Watch Fors", "Alerts", "Bulletins", "Profiles", and "Lookouts" are all products of Intelligence Operations containing reliable <u>confirmed</u> information usually relevant for a specified or limited duration. These products are used to disseminate intelligence information to intended users in the field.	Les listes de surveillance, les alertes, les communiqués, les profils et les avis de surveillance sont des produits des opérations du renseignement qui contiennent des renseignements <u>confirmés</u> fiables qui sont, en règle générale, valables pour une durée précise ou limitée. Ces produits sont utilisés afin de diffuser des renseignements aux utilisateurs visés à l'échelle locale.
For CBSA purposes, intelligence concerns potential or actual risk situations of a tactical, operational, or strategic nature. For example, intelligence can forewarn of contraband concealment methods, conveyance routes, and modes of transportation, as well as the subjects involved in contraband smuggling.	Aux fins de l'ASFC, le renseignement touche des situations pouvant présenter ou présentant des risques de nature tactique, opérationnelle ou stratégique. Par exemple, le renseignement peut servir à donner des informations sur des méthodes de dissimulation de la contrebande, sur les itinéraires de certains moyens de transport et sur les modes de transport, ainsi que sur les personnes impliquées dans des activités de

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	contrebande.
There are three types of intelligence:	Il existe trois types de renseignement :
a) Tactical – Intelligence that has a bearing upon an existing enforcement condition, current operation, or is of only local interest, usually immediately applicable to the user.	a) Tactique – Renseignement qui a des répercussions sur une condition d'exécution existante, sur une opération courante ou qui est d'un intérêt local uniquement, et qui est applicable sur-le-champ à l'utilisateur.
b) Operational – Intelligence that, although related to a specific case, has direct application to overall enforcement efforts.	b) Opérationnel – Renseignement qui a une application directe sur les efforts d'exécution généraux même s'il se rapporte à un cas précis.
c) Strategic – Intelligence that can be national or international in scope, is the result of in-depth analysis of data collected over a period of time, and involves comprehensive research material.	c) Stratégique – Renseignement qui peut être de portée nationale ou internationale, qui est le résultat d'une analyse approfondie des données recueillies au cours d'une certaine période et qui comprend une somme importante de matériel de recherche.
INTELLIGENCE MANAGEMENT SYSTEM/OCCURRENCE REPORTING SYSTEM (IMS/ORS)	SYSTÈME DE GESTION DU RENSEIGNEMENT / SYSTÈME DE RAPPORT DES OCCURRENCES (SGR/SRO)
IMS is an online case management system for intelligence personnel to maintain and update intelligence information. It is available 24/7 to intelligence and front line staff based on a need to know principle. IMS includes the online Occurrence Reporting System (ORS) used by Border Services Officers. Since 2002, the system has provided the CBSA with a coast-to-coast electronic network that can assist in the identification of high cross-border risks in areas such as trans-national organized crime, the illegal movement of currency and the illicit movement of drugs, firearms and other contraband.	Le SGR est un système en ligne de gestion des cas qui permet au personnel du renseignement de conserver et de mettre à jour les renseignements. Le système est accessible aux employés du renseignement et de première ligne 24 heures sur 24, 7 jours sur 7, selon le principe du besoin de connaître. Le SGR comprend le Système de rapport des occurrences (SRO) en ligne utilisé par les agents des services frontaliers. Depuis 2002, le système fournit à l'ASFC un réseau électronique, d'un océan à l'autre, pouvant aider à cerner les risques transfrontaliers élevés dans des secteurs tels que le crime organisé transnational, la circulation illégale de devises ainsi que le trafic illicite transfrontalier de drogues,

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	d'armes à feu et d'autres marchandises de contrebande.
INTENSIVE EXAMINATION	EXAMEN EXHAUSTIF
Goods or evidence discovered in the course of a selective examination may serve as reasonable grounds to progress to a more intensive search. As the intensity increases, the officer is required to state more precisely the reasonable grounds, which are noted in the Customs Notebook.	Des marchandises ou des preuves découvertes au cours d'un examen sélectif peuvent servir de motifs raisonnables pour procéder à une recherche plus approfondie. Lorsque l'intensité augmente, l'agent est tenu de préciser davantage les motifs raisonnables qui figurent dans le carnet douanier.
In addition to undeclared or prohibited goods found during selective examinations, comments made by the traveller, observations by the officer of unusual behaviour on the part of the traveller, or specific Intelligence information (such as a clear identification of the vehicle or traveller) may contribute to the establishment of reasonable grounds to proceed to a more intensive level. This level of examination may include disassembly of a conveyance.	En plus des marchandises non déclarées ou prohibées découvertes au cours des examens sélectifs, des commentaires formulés par le voyageur, des observations visuelles de l'agent sur un comportement inhabituel de la part du voyageur ou des renseignements précis (comme une identification claire du véhicule ou du voyageur) peuvent contribuer à établir des motifs raisonnables afin de procéder à un niveau d'examen plus intensif. Ce niveau d'examen peut comprendre le démontage d'un moyen de transport.
INTERDICTION	INTERDICTION
Interdiction is defined as enforcement activity specifically aimed at identifying and intercepting the illegal movement of goods and substances across international borders. A key objective of interdiction is the apprehension of persons responsible for such illegal movements.	L'interdiction est une activité d'exécution qui vise tout particulièrement à identifier et à intercepter la circulation illégale de marchandises et de substances à une frontière internationale. L'un des objectifs clés de l'interdiction consiste à arrêter les personnes responsables des activités illégales en question.
INTERNAL CARRIER	PASSEUR PAR VOIE INTERNE
A person who has ingested and/or utilized body cavities to smuggle contraband into Canada, is an internal carrier.	Toute personne qui introduit de la contrebande au Canada par ingestion ou par insertion dans les orifices du corps.
INTERNAL CONSPIRACY	COMLOT INTERNE
This term refers to the illegal entry of goods facilitated by persons employed in an official capacity in the transportation or	L'introduction illégale de marchandises facilitée par des personnes occupant un emploi à caractère officiel dans une

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allied industry, for example: airline personnel, brokers, cargo handlers and other transportation company employees.	entreprise de l'industrie des transports ou d'une industrie connexe, comme le personnel navigant, les courtiers, les manutentionnaires du fret et les autres employés des compagnies de transport.
INTERNATIONAL CRIMINAL POLICE ORGANIZATION (INTERPOL)	ORGANISATION INTERNATIONALE DE POLICE CRIMINELLE (INTERPOL)
INTERPOL is an international crime database system that maintains information in the following areas:	INTERPOL est un système de base de données du crime international qui contient des renseignements dans les domaines suivants :
a) Offences against persons and property; murder, kidnapping, hostage-taking, interference with civil aviation, terrorism, firearms and explosives, theft and dealings in stolen property, in particular, works of art and cultural property.	a) Les atteintes aux personnes et aux biens; les meurtres, les kidnappings, les prises d'otages, les mesures d'obstruction dans l'aviation civile, le terrorisme, les armes à feu et les explosifs, les vols et le traitement d'objets volés, plus particulièrement les œuvres d'art et la propriété intellectuelle.
b) Economic and financial crime such as currency and document counterfeiting and forgery, fraud of maritime insurance and computer crime.	b) Les crimes économiques et financiers comme le faux-monnaillage et la contrefaçon de documents, les fraudes à l'égard des assurances maritimes et le crime informatique.
c) Drug trafficking such as illicit cultivation, manufacture, transport, and sale.	c) Les activités liées au trafic des stupéfiants comme la culture illégale, la fabrication, le transport et la vente.
They can also assist in the following areas: criminal history, missing persons, driver's licence, licence plates, vehicles, registered owners, guns, boats, boat registrations, and motors.	Il peut également être utile dans les domaines suivants : passé criminel, personnes disparues, permis de conduire, plaques d'immatriculation, véhicules, propriétaires enregistrés, armes, embarcations, immatriculation des embarcations et moteurs.
The system can be accessed through CPIC.	On peut accéder au système au moyen du CIPC.
INTERROGATION	INTERROGATOIRE
Interrogation is a process designed to develop an admission of guilt. It should be reserved for those situations when a subject's guilt has been established from	Un interrogatoire est un processus qui a été conçu afin d'entraîner un aveu de culpabilité. Il doit se limiter aux situations au cours desquelles la culpabilité d'une

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the investigation as reasonably certain.	personne a été reconnue comme étant raisonnablement certaine à partir d'une enquête.
INTERVIEW	ENTREVUE
An interview is a non-accusatory process in which an officer asks questions designed to develop factual information, such as who, what, when, where and how.	Une entrevue est un processus non accusatoire au cours duquel un agent pose des questions destinées à recueillir des renseignements factuels comme qui, quoi, quand, où et comment.
IRREGULAR MIGRATION	MIGRATION IRRÉGULIÈRE
Irregular migration refers to the migration of individuals who have migrated from one country to another with no legal recognition of their right to do so. The CBSA's strategy for dealing with irregular migration to Canada relies on intelligence-based decision making to identify high-risk travellers, while facilitating the movement of legitimate visitors, refugees and immigrants.	Les migrants irréguliers sont des personnes qui ont migré d'un pays à l'autre sans avoir le droit de le faire. La stratégie de l'ASFC pour contrer la migration irrégulière au Canada repose sur la prise de décision axée sur le renseignement afin de repérer les voyageurs à risque élevé, tout en facilitant la circulation des visiteurs, des réfugiés et des immigrants en règle.
JOINT FORCES OPERATION (JFO)	OPÉRATION POLICIÈRE CONJOINTE (OPC)
A JFO is an undertaking or agreement between the CBSA and another agency/agencies to investigate the contravention of federal legislation dealing with drugs, fraud, weapons, and any other <i>Customs Act</i> or <i>Customs Tariff</i> infractions. Generally, it will have a specified duration, identified targets, and an anticipated outcome.	Toute entreprise conjointe ou accord conclu entre l'ASFC et d'autres organismes pour enquêter sur des infractions à la législation fédérale concernant des stupéfiants, de la fraude ou des armes ou sur d'autres infractions à la <i>Loi sur les douanes</i> ou au <i>Tarif des douanes</i> . En règle générale, une OPC est d'une durée précise, les cibles sont identifiées et les résultats sont prévus.
JURISPRUDENCE	JURISPRUDENCE
The science or theory of law in which certain rules and/or precedents are applied in similar cases in an attempt to provide equitable judgments.	Science ou théorie du droit dans le cadre de laquelle certaines règles et/ou certains précédents sont appliqués dans des cas similaires en vue de rendre des décisions équitables.
JUSTICE	JUGE
A justice of the peace or a provincial court	Juge de paix ou juge de la cour

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judge.	provinciale.
KIDNAPPING	KIDNAPPING
As defined in section 279 (1) of the <i>Criminal Code</i> , a person who kidnaps a person with intent to confine or imprison them against their will, to cause them to be sent or transported out of Canada against their will, or to hold them for ransom or for service against their will, is guilty of an indictable offence.	Au sens du paragraphe 279(1) du Code criminel, commet un acte criminel quiconque enlève une personne dans l'intention de la faire séquestrer ou emprisonner contre son gré, de la faire illégalement envoyer ou transporter à l'étranger contre son gré, de la détenir en vue de rançon ou de service contre son gré.
LOOKOUT	AVIS DE SURVEILLANCE
A specific intelligence product designed to identify a person, corporation, conveyance or shipment that, according to various risk indicators or other available intelligence, may pose a threat to the health, safety, security, economy, or environment of Canada and Canadians.	Produit particulier du renseignement conçu pour identifier une personne, une entreprise, un moyen de transport ou une expédition qui, selon divers indicateurs de risque ou d'autres données du renseignement disponibles, peut présenter un risque pour la santé, la sécurité, la sécurité économique ou l'environnement du Canada et des Canadiens.
MEMORANDUM OF UNDERSTANDING (MOU)	PROTOCOLE D'ENTENTE (PE)
A document describing a bilateral or multilateral agreement between parties. It expresses a convergence of will between the parties, indicating an intended common line of action.	Document décrivant une entente bilatérale ou multilatérale entre des parties. Il exprime une convergence de volonté entre les parties, en indiquant une ligne d'action commune visée.
MENS REA	MENS REA
A guilty mind, a wrongful purpose or a criminal intent. With <i>actus reus</i> , one of the two constant elements of an offence that must be proved.	Intention criminelle ou coupable. Elle constitue, avec l' <i>actus reus</i> , l'un des deux éléments essentiels d'une infraction qui doivent être étayés par la preuve.
MINISTER	MINISTRE
"Minister" means, the Minister of Public Safety and Emergency Preparedness.	Le terme « ministre » fait référence au ministre de la Sécurité publique et de la protection civile.
MISDESCRIPTION	FAUSSE DÉSIGNATION

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Misdescription is a contravention of the <i>Customs Act</i> that occurs when goods are declared at the CBSA, but are purposely described incorrectly to introduce the goods into Canada or to enable the goods to be imported at a lower or preferred rate of duty.	Infraction à la <i>Loi sur les douanes</i> qui consiste à donner délibérément une description inexacte des marchandises déclarées à l'ASFC pour pouvoir les introduire au Canada ou les importer à un taux de droit réduit ou préférentiel.
MISSING CHILD	ENFANTS DISPARUS
Any person under 18 years of age whose whereabouts are unknown to their legal guardian and where the circumstances surrounding the disappearance suggest the child was removed without the guardian's consent, or the child's safety is at risk.	Toute personne âgée de moins de 18 ans dont le lieu où elle se trouve est inconnu de son tuteur légal, et où les circonstances entourant sa disparition suggèrent que l'enfant ait été enlevé sans le consentement du tuteur ou que la sécurité de l'enfant est à risque
MODUS OPERANDI	MODUS OPERANDI
In law enforcement, the term is used to describe the particular method of a criminal's activity.	Dans le cadre de l'exécution de la loi, ce terme sert à décrire une méthode précise utilisée par un criminel pour ses activités.
MONETARY INSTRUMENTS	INSTRUMENTS MONÉTAIRES
"Monetary Instruments" means	Les « effets » s'entend de
a) securities, including stocks, bonds, debentures and treasury bills, in bearer form or in such other form as title to them passes upon delivery; and	a) titres, y compris d'actions, de bons, d'obligations, de bons du Trésor, au porteur ou sous toute autre forme qui fait que le titre appartient à une personne sur livraison; et de
b) negotiable instruments in bearer form, including banker's drafts, cheques, traveller's cheques and money orders, other than:	b) instruments négociables au porteur, y compris les traites bancaires, les chèques, les chèques de voyage, les mandats, autres que :
i) warehouse receipts or bills of lading, and	i) des récépissés d'entrepôts ou des connaissements;
ii) negotiable instruments that bear restrictive endorsements or a stamp for the purposes of clearing or are made payable to a named person and have not been endorsed.	ii) des instruments négociables à endossement restrictif ou estampillés aux fins d'affranchissement, ou payables à une personne nommée et qui n'ont pas été endossés.
iii) Government of Canada issued cheques (considered to be a warrant that financial institutions must honour and may not be seized under the PCMLTFA).	iii) Chèques émis par le gouvernement du Canada (considérés à titre de garantie que les institutions financières doivent honorer et ne peut être saisie en vertu de la LRPCFAT)

MONEY LAUNDERING	RECYCLAGE D'ARGENT (Blanchissement)
Money gained from illicit activities is transacted through banks or fake businesses to hide its original illegal source and make detection difficult.	L'argent gagné à partir d'activités illicites qui est transigé par les banques ou par de fausses activités afin de camoufler sa source illégale originale et d'en rendre la détection difficile.
MONEY LAUNDERING OFFENCE	INFRACTION EN MATIÈRE DE RECYCLAGE D'ARGENT
"Money laundering offence" means an offence under subsection 462.31(1) of the <i>Criminal Code</i> , section 9 of the <i>CDSA</i> , section 126.2 of the <i>Excise Act</i> , section 163.2 of the <i>Customs Act</i> , section 5 of the <i>Corruption of Foreign Public Officials Act</i> or section 28 of the <i>Crimes Against Humanity and War Crimes Act</i> .	Une « infraction en matière de recyclage d'argent » signifie une infraction commise en vertu du paragraphe 462.31(1) du <i>Code criminel</i> , de l'article 9 de la <i>LRDAS</i> , de l'article 126.2 de la <i>Loi sur l'accise</i> , de l'article 163.2 de la <i>Loi sur les douanes</i> , de l'article 5 de la <i>Loi sur la corruption d'agents publics étrangers</i> ou de l'article 28 de la <i>Loi sur les crimes contre l'humanité et les crimes de guerre</i> .
MONITORING	SURVEILLANCE
Controlling activities, through observation and unscheduled inspections of areas containing in-bond goods and/or conveyances permitted in Canada under prescribed conditions is termed monitoring.	La surveillance se définit par toute activité de contrôle, au moyen de l'observation et d'inspections imprévues de marchandises sous douane et/ou de moyens de transport permis au Canada en vertu de conditions réglementaires.
MOTOR VEHICLE	VÉHICULES MOTEURS
A vehicle that is drawn, propelled or driven by any means other than muscular power, but does not include railway equipment.	Véhicule qui est tiré, propulsé ou conduit par tout moyen autre que la force musculaire, mais qui exclut le matériel ferroviaire.
NARCOTIC	STUPÉFIANTS
Narcotics are a group of drugs with potent analgesic effects, associated with alteration of mood and behaviour.	Les stupéfiants sont un groupe de drogues qui ont des effets analgésiques qui peuvent modifier l'humeur et le comportement.
The chief narcotic drugs are opium, its constituent's morphine and codeine, and the morphine derivative heroin.	Les principales drogues sont l'opium, ses composantes la morphine et la codéine et l'héroïne, qui est un dérivé de la morphine.
Narcotics are thought to act by mimicking	On croit que les stupéfiants agissent en

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and/or enhancing the activity of endorphins; proteins produced by the brain and believed to modulate pain and other nervous system functions. Narcotics are effective for numbing the senses, alleviating pain, inducing sleep, and relieving diarrhoea. Common side effects include constipation, nausea, and allergic reactions. They are respiratory depressants and in large doses can cause coma and death. All narcotics are addictive; synthetic narcotics such as meperidine and methadone tend to be less addicting and possess fewer side effects.	masquant ou en augmentant l'activité des endorphines, les protéines produites par le cerveau et en atténuant la douleur ainsi que d'autres fonctions du système nerveux. Les stupéfiants sont efficaces pour engourdir les sens, pour atténuer la douleur, pour provoquer le sommeil et pour soulager la diarrhée. Les effets secondaires courants comprennent la constipation, la nausée et des réactions allergiques. Ils sont des dépressifs respiratoires et, lorsqu'ils sont pris en grande quantité, ils peuvent entraîner le coma ou la mort. Tous les stupéfiants peuvent entraîner une dépendance; les stupéfiants synthétiques comme la mépéridine et la méthadone semblent entraîner une moins grande dépendance et ils ont moins d'effets secondaires.
For customs enforcement purposes, the term 'drugs' includes narcotics.	Aux fins de l'exécution des douanes, le terme « drogues » comprend les stupéfiants.
NATIONAL CASE MANAGEMENT SYSTEM (NCMS)	SYSTÈME NATIONAL DE GESTION DES CAS (SNGC)
NCMS is CBSA's primary immigration enforcement case management system which interfaces with FOSS. It is an immigration enforcement case tracking tool that is web enabled and uses a centralized database to track immigration cases involving criminality, detentions, hearings, interventions, appeals, investigations and removals.	Le SNGC est le principal système de gestion des cas d'exécution de la loi en matière d'immigration de l'ASFC qui a une interface avec le SSOBL. Il s'agit également d'un outil de suivi en ligne des cas d'exécution de la loi en matière d'immigration et qui se sert d'une base de données pour assurer le suivi des cas d'immigration visant la criminalité, les détentions, les audiences, les interventions, les appels, les enquêtes et les renvois.
NATIONAL CRIME INFORMATION CENTRE (NCIC)	NATIONAL CRIME INFORMATION CENTRE (NCIC)
NCIC is the U.S. equivalent to the Canadian Police Information Centre (CPIC).	Le NCIC est l'équivalent américain du Centre d'information de la police canadienne (CIPC).
NATIONAL SECURITY	SÉCURITÉ NATIONALE
National security is defined as the territorial integrity, sovereignty, and	L'intégrité territoriale, la souveraineté et la liberté internationale d'action au Canada

international freedom of action of Canada. Intelligence activities relating to national security encompass all the military, economic, political, scientific, and technological and other aspects of foreign developments that pose actual or potential threats to Canada's national interests. Risks to national security include terrorism and terrorist related activities, as well as chemical, biological, radiological, nuclear and explosive materials.	représentent la sécurité nationale. Les activités du renseignement qui se rapportent à la sécurité nationale comprennent toutes les activités militaires, économiques, politiques, scientifiques et technologiques ainsi que les autres aspects du développement étranger qui représentent des menaces réelles ou possibles à l'égard des intérêts nationaux du Canada. Les risques pour la sécurité nationale comprennent le terrorisme et les activités liées au terrorisme, ainsi que les matières chimiques, biologiques, radiologiques, nucléaires et explosives.
NATIONAL TARGETING CENTRE (NTC)	CENTRE NATIONAL DE CIBLAGE (CNC)
The Canada Border Services Agency (CBSA) operates the National Targeting Centre (NTC) to ensure national security by increasing Canada's ability to detect and interdict the movement of high-risk people and goods. The NTC operates 24/7, and acts as a focal point and interface between international, national and local law-enforcement agencies to protect Canadians against current and emerging threats.	L'Agence des services frontaliers du Canada (ASFC) gère le Centre national de ciblage (CNC) pour assurer la sécurité nationale en renforçant la capacité du Canada à repérer et à intercepter les personnes et les marchandises à risque élevé. Le CNC fonctionne 24 heures sur 24, 7 jours sur 7. Il sert de centre de liaison entre les organismes d'application de la loi à l'échelle internationale, nationale et locale en vue de protéger les Canadiens contre les menaces actuelles et futures.
NON-DESIGNATED OFFICER	AGENT NON DÉSIGNÉ
A Border Services Officer who is not designated by the Minister under the authority of subsection 163.4 of the <i>Customs Act</i> .	Un agent des services frontaliers qui n'est pas désigné par le ministre en vertu de l'article 163.4 de la <i>Loi sur les douanes</i> .
NON-RESIDENT	NON-RÉSIDENT
A person, who, in the settled routine of their life, makes their home, resides and is ordinarily present in a place outside Canada, is a non-resident.	Toute personne qui, dans son cadre de vie habituel, établit son domicile, réside et est ordinairement présente ailleurs qu'au Canada.
NON-RESULTANT (COMMERCIAL)	EXAMEN INFRUCTUEUX (COMMERCIAL)
A "non-resultant" examination refers to a	Un examen infructueux s'entend d'une

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situation whereby the examination and/or referrals have been complete and all goods are in compliance with the <i>Customs Act</i> or any other act of Parliament.	situation où l'examen ou les renvois ont été effectués et toutes les marchandises sont conformes à la Loi sur les douanes ou à toute autre loi du Parlement.
Commercial goods which have been referred for suspected non-compliance at a BSO's discretion are non-resultant unless subsequent action has been taken in the above listed column.	Les marchandises commerciales qui ont été renvoyées par un ASF parce qu'il soupçonnait un cas d'inobservation sont considérées comme ayant fait l'objet d'un examen infructueux à moins que l'une des mesures subséquentes énumérées dans la liste ci-dessus soit prise.
OBSCENE MATERIAL	MATÉRIEL OBSCÈNE
Pursuant to subsection 163(8) of the <i>Criminal Code</i> , obscene material is defined as "any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty, and violence."	En vertu du paragraphe 163(8) du <i>Code criminel</i> , est réputée obscène toute publication dont une caractéristique dominante est l'exploitation indue des choses sexuelles, ou de choses sexuelles et de l'un ou plusieurs des sujets suivants, à savoir : le crime, l'horreur, la cruauté et la violence.
OFFICER	AGENT
"Officer" has the same meaning as in subsection 2(1) of the <i>Customs Act</i> .	Le terme « agent » a la même signification que la définition donnée au paragraphe 2(1) de la Loi sur les douanes.
OFFICER IN CHARGE	FONCTIONNAIRE RESPONSABLE
This definition only applies to police officers and not Border Services Officers (BSO's). It is the officer for the time being in command of the police force responsible for the lock-up or other place to which an accused is taken after arrest or a peace officer designated by him for the purposes Part XVI of the <i>Criminal Code</i> who is in charge of that place at the time an accused is taken to that place to be detained in custody.	Cette définition s'applique à un policier et non pas les agents des services frontaliers. Fonctionnaire qui, au moment considéré, commande les policiers chargés du poste de police ou autre lieu où un prévenu est conduit après son arrestation ou tout agent de la paix désigné par lui pour l'application de la partie XVI du Code criminel et qui est responsable de ce lieu au moment où un prévenu y est conduit pour être détenu sous garde.
OFFICER POWERS	POUVOIRS CONFÉRÉS AUX AGENTS
Term describing the authorities that Bill C-18, <i>An Act to Amend the Customs Act and the Criminal Code</i> , accorded Designated Officers that:	Terme décrivant les pouvoirs suivants qui ont été conférés aux agents désignés en vertu du projet de loi C-18, <i>Loi modifiant la Loi sur les douanes et le Code criminel</i> :

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a) expanded their powers of arrest and detention;	a) élargir leurs pouvoirs d'arrestation et de détention;
b) bridged the enforcement gap;	b) combler une lacune dans notre mandat d'exécution;
c) authorized them to act when they uncover evidence of a criminal offence, and assisted them in preventing criminals from further entering Canada.	c) autoriser les agents des douanes à intervenir lorsqu'ils découvrent des preuves d'infraction criminelle et les aider à empêcher les criminels d'entrer au Canada.
ORIGINATING AGENCY	ORGANISME D'ORIGINE
The agency that is the original source of information or intelligence or has input information into an enforcement database and holds hard copies of the information is the originating agency.	Organisme qui est la source initiale de l'information ou qui a entré cette information dans une base de données destinée à l'application de la loi et qui détient les sorties sur papier de cette information
ORS REPORT	RAPPORT DU SRO
The Occurrence Reporting System (ORS) is an integral part of the Intelligence Management System (IMS). CBSA officers use the ORS to provide an Occurrence Report relating to incidents/occurrences involving, or suspected of involving, illegal cross border activity. These reports are electronically submitted to designated regional intelligence offices for review, verification and action.	Le Système de rapport des occurrences (SRO) fait partie intégrante du Système de gestion du renseignement (SGR). Les agents de l'ASFC utilisent le SRO pour produire des rapports d'occurrence sur des incidents ou des événements relatifs à des activités transfrontalières illégales, réelles ou présumées. Ces rapports sont transmis par voie électronique à des bureaux régionaux du renseignement désignés à des fins d'examen et de vérification et afin que des mesures soient prises.
OTHER GOVERNMENT DEPARTMENT (OGD)	AUTRES MINISTÈRES GOUVERNEMENTALES (AMG)
Other branches of government whose mandate may be linked or aligned to that of the CBSA.	Autres secteurs du gouvernement dont le mandat peut être lié à celui de l'ASFC ou harmonisé avec celui-ci.
OUR MISSING CHILDREN PROGRAM (OMC)	PROGRAMME NOS ENFANTS DISPARUS (OMC)
A joint initiative among CBSA, the RCMP, and the Department of Foreign Affairs and International Trade to help return abducted children and runaways to their homes. (see also Missing Child, Parental/Familial	Il s'agit d'une initiative conjointe entre l'ASFC, la GRC et le ministère des Affaires étrangères et du Commerce international qui sert à aider à ramener les enfants enlevés et les fugueurs dans leur foyer.

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Abductions, Recovery, Runaways, Stranger Abductions and Throwaways)	(Voir aussi Enfants Disparus, Les enlèvements par l'un des parents, Enfant Retrouvé, Les fugueurs, Les enlèvements par un étranger et Les laissés-pour-compte)
PARENTAL/FAMILIAL ABDUCTIONS	LES ENLÈVEMENTS PAR L'UN DES PARENTS
Children who are taken from their legal custodian by a parent or family member without consent or in violation of a custody agreement.	Les enfants qui sont enlevés de leur tuteur légal par un parent ou un membre de la famille sans le consentement ou en contrevenant aux arrangements visant la garde.
PARTIAL OFFLOAD	DÉCHARGEMENT PARTIEL
A partial offload occurs where 26 to 75% of the goods are removed from a conveyance, container, or truck to allow total access for an examination. Partial off-loads may be used for contraband shipments classified as a medium-low risk.	Un déchargement partiel se produit lorsqu'un pourcentage entre 26 et 75 % des marchandises sont déchargées d'un moyen de transport, d'un conteneur ou d'un camion afin de permettre un accès total à des fins d'examen. Les déchargements partiels peuvent être effectués pour les expéditions classées à titre de risque de contrebande moyen ou faible.
PASSENGER NAME RECORD (PNR)	DOSSIER PASSAGER (DP)
Passenger Name Record (PNR) is data regarding a persons' travel itinerary, contained within a commercial carrier's reservation system, created once a person makes a reservation. Depersonalized PNR is a record on which data elements that identify the person are not viewable. <i>No-name PNR</i> is a record on which the full name of the person is blocked from the PNR and is not viewable.	Le Dossier passager (DP) se compose de données concernant l'itinéraire de voyage d'une personne qui figurent dans un système de réservations d'un transporteur commercial et il est créé lorsqu'une personne fait des réservations. Le DP dépersonnalisé est un registre dans lequel les éléments de données qui identifient une personne ne peuvent être visualisés. Le <i>DP sans nom</i> est un registre dans lequel le nom complet d'une personne est bloqué du DP et ne peut être visualisé.
PASSENGER INFORMATION SYSTEM (PAXIS)	SYSTÈME D'INFORMATION SUR LES VOYAGEURS (SIPAX)
Passenger Information System (PAXIS) is a secure system owned and used by the CBSA to review and analyze API/PNR data on persons scheduled to arrive in	Le Système d'information sur les voyageurs (SIPAX) est un système sécuritaire qui appartient à l'ASFC et que cette dernière utilise afin d'examiner et

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Canada.	d'analyser les données de l'IPV/DP portant sur les personnes devant arriver au Canada.
PAT DOWN	PALPAGE
See FRISK.	Voir FOUILLE PALPATION.
PEACE OFFICER	AGENT DE LA PAIX
A person listed in the definition of "peace officer" found in section 2 of the <i>Criminal Code</i> .	Toute personne énumérée dans la définition « agent de la paix » qui se trouve à la partie 2 du <i>Code criminel</i> .
PERSON IN AUTHORITY	PERSONNE EN AUTORITÉ
This refers to anyone who has, or the accused believes has, the authority to exercise control over him/her or over the proceedings or prosecution against him/her.	Toute personne qui peut exercer un contrôle sur l'accusé ou sur la procédure ou la poursuite engagée contre l'accusé ou qui est perçue par ce dernier comme ayant ce pouvoir.
PERSONAL EXEMPTION	EXEMPTION PERSONNELLE
This is the benefit of free rates of customs duty given to goods that are classifiable under heading No. 98.04 of the <i>Customs Tariff</i> .	Il s'agit de l'avantage du régime de franchise accordé aux marchandises qui peuvent être classées sous la position 98.04 du <i>Tarif des douanes</i> .
PERSONAL GOODS	EFFETS PERSONNELS
Personal goods are intended for sole use by a traveller or other persons of their immediate family and are not intended for resale, distribution or commercial use of any kind. Also referred to as casual goods.	Marchandises destinées à l'usage exclusif d'un voyageur ou des membres de sa famille immédiate et non à la revente, à la distribution ou à un usage commercial quelconque. Ces marchandises sont aussi appelées « marchandises occasionnelles ».
PERSONAL SEARCH	FOUILLE PERSONNELLE
A personal search is a frisk for officer safety followed by the full or partial disrobement of a person to detect unreported, prohibited, controlled, or regulated goods that they may have secreted on or about their person, so that officers can make a visual inspection (also referred to as a "strip search"). When a personal search is done for contraband, the individual must completely disrobe if so	Une fouille personnelle est une palpation suivie du déshabillage intégral ou partiel d'une personne visant à faciliter la recherche des marchandises non déclarées, prohibées, contrôlées ou réglementées que cette personne aurait pu dissimuler sur elle ou près d'elle, qui est effectuée afin que les agents puissent procéder à une inspection visuelle (aussi appelée « fouille à nu »). Lorsqu'une

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requested.	fouille personnelle est effectuée pour des fins de contrebande, l'individu doit se dévêtir entièrement, si demandé.
POINT OF FINALITY	POINT D'IRRÉVOCABILITÉ
Arrivals to Canada	Arrivées au Canada
The point of finality respecting a report or accounting is the point in time at which a transporter, importer, exporter, agent or traveller, having been given every reasonable opportunity to make a true and complete report or accounting, makes a report or accounting effectively asserting it to be true and complete. The same holds true for goods that are prohibited, controlled, or regulated by an Act of Parliament.	Le point d'irrévocabilité pour une déclaration initiale ou une déclaration en détail est atteint lorsque le transporteur, l'importateur, l'exportateur, le mandataire ou le voyageur, après avoir eu un délai raisonnable pour produire une première déclaration ou une déclaration en détail véridique et complète, produit effectivement une telle déclaration en affirmant qu'elle est véridique et complète. Il en va de même pour les marchandises dont l'importation est prohibée, contrôlée ou réglementée en vertu d'une loi fédérale.
Exports from Canada	Exportations du Canada
As with goods and travellers arriving in Canada, the exporter of goods has legal obligations to fulfill and must be given the opportunity to do so. In the case of exportations, the point of finality is reached when either of the following occurs:	Pour les marchandises et les voyageurs qui arrivent au Canada, l'exportateur des marchandises a des obligations juridiques à respecter et on doit lui permettre de le faire. Dans le cas des exportations, le point d'irrévocabilité est atteint lorsque l'une des situations suivantes se présente :
a) The exporter, his agent or the carrier has presented CBSA with an export report which is conclusive and the officer believes that all information forthcoming on a voluntary basis has been received; or	a) L'exportateur, son mandataire ou le transporteur a présenté à l'ASFC une déclaration d'exportation qui est conclusive et l'agent croit que tous les renseignements devant être fournis volontairement ont été reçus;
b) The conveyance aboard which the goods are laden begins its continuous journey out of Canada before a report is made to CBSA.	b) Le moyen de transport à bord duquel les marchandises ont été chargées débute son périple continu à partir du Canada avant qu'une déclaration soit présentée à l'ASFC.
In most circumstances, if the point of finality has not been reached, a Border Services officer should not seize the goods because the infraction has not yet	Dans la plupart des cas, si le point d'irrévocabilité n'a pas été atteint, un agent des services frontaliers ne doit pas saisir les marchandises parce qu'aucune

occurred. In other words, the goods are still classified as domestic and the exporter still has the opportunity to present the documents, on a voluntary basis, prior to exportation. If there are irregularities, the officer will proceed to the next stage of the investigation such as examination of the goods or requests for further information.	infraction n'a encore été commise. Autrement dit, les marchandises sont toujours classées à titre de marchandises nationales et l'exportateur a toujours l'occasion de présenter les documents nécessaires, volontairement, avant l'exportation. En cas d'anomalies, l'agent procédera à l'étape suivante de l'enquête comme l'examen des marchandises ou une demande de renseignements supplémentaires.
POLICE AGENCY OF JURISDICTION	SERVICE DE POLICE COMPÉTENT
For customs purposes, this refers to police agencies that have entered into agreements, usually Memorandums of Understanding (MOU), with the CBSA to be the first response police agency to local ports of entry. In cases of suspected <i>Criminal Code</i> offences discovered by Border Services Officers, the police agency of jurisdiction will ultimately determine if charges will be laid and whether they will attend and take the subject(s) into custody.	Aux fins des douanes, service de police qui a conclu une entente, normalement un protocole d'entente(PE), avec l'ASFC de manière à être le premier service de police d'intervention aux points d'entrée locaux. Lorsqu'les agents des services frontaliers constate une infraction possible au Code criminel, c'est le service de police compétent qui déterminera si des accusations seront portées et si des policiers se présenteront au bureau de douane pour mettre l'accusé sous garde.
POLICE INFORMATION RETRIEVAL SYSTEM (P.I.R.S.)	SYSTÈME DE RÉCUPÉRATION DE RENSEIGNEMENTS JUDICIAIRES (S.R.R.J.)
An automated system for the storage and retrieval of intelligence information comprised of a central data bank located at RCMP Headquarters in Ottawa. It contains detailed information on individuals, companies, commodities, conveyances, methods of concealment, and the movement of goods linked to known or suspected customs infractions.	Un système automatisé pour enregistrer et recouvrer des renseignements à partir d'une unité centrale de données située au quartier général de la GRC à Ottawa. Le SRRJ contient des renseignements détaillés sur les personnes, les sociétés, les marchandises, les moyens de transport, les méthodes de dissimulation et le mouvement des marchandises qui ont été associés à des infractions douanières connues ou qui font l'objet de soupçons.
PORT OF ENTRY	BUREAU D'ENTRÉE
This refers to any location authorized by the Agency, as a reporting/clearance and release site for customs purposes including storage and/or document processing.	Tout emplacement autorisé par l'Agence afin de servir de poste de déclaration et de dédouanement aux fins des douanes, et servant également à l'entreposage et(ou) au traitement des documents.

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POSSESSION	POSSESSION
For the purposes of the <i>Criminal Code</i> ,	Aux fins du <i>Code criminel</i> ,
a) a person has anything in possession when he has it in his personal possession or knowingly	a) une personne a quelque chose en sa possession lorsque cette chose se trouve en sa possession personnelle ou qu'il l'a sciemment
i) has it in the actual possession or custody of another person,	i) placée en la possession effective ou sous la garde d'une autre personne
ii) has it in any place, whether or not that place belongs to or is occupied by him, for the use or benefit of himself or of another person; and	ii) placée en un lieu, que ce lieu lui appartienne ou non ou soit occupé par elle ou non, pour ses propres fins ou celles d'une autre personne.
b) where two or more persons, with the knowledge and consent of the rest, has anything in his custody or possession, it shall be deemed to be in the custody and possession of each and all of them.	b) lorsque deux ou plusieurs personnes, avec la connaissance et le consentement des autres, ont quelque chose sous leur garde ou en leur possession, cette chose est jugée être sous la garde et en la possession de tous sans exception.
POSTAL IMPORT CONTROL SYSTEM (PICS)	SYSTÈME DE CONTRÔLE DES IMPORTATIONS POSTALES (SCIP)
PICS is an automated invoicing and accounting system used to process international mail items entering Canada.	Le Système de contrôle des importations postales (SCIP) est un système automatisé de facturation et de déclaration en détail qui sert à traiter les envois postaux internationaux arrivant au Canada.
PRECURSOR	PRÉCURSEUR
A chemical that, after undergoing minor chemical transformations, becomes the desired drug or product is a precursor. The chemicals in question can be used in drug production as precursors, reagents and solvents but for simplicity all are called precursors.	Un précurseur est un produit chimique qui, après avoir subi des transformations chimiques mineures, devient la drogue ou le produit souhaité. Les produits chimiques en question peuvent être utilisés dans la production de drogues à titre de précurseurs, de réactifs et de solvants, mais par mesure de simplification, ils sont tous appelés précurseurs.
PRESCRIBED	PRÉVU PAR RÈGLEMENT
"Prescribed" means prescribed by	« PrévU par règlement » signifie inscrit

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regulations made by the Governor in Council.	dans le règlement créé par le gouverneur en conseil.
PRESCRIBED SUBSTANCES	SUBSTANCES RÉGLEMENTÉES
See Radioactive Materials/Prescribed Substances.	Voir Matières radioactives /Substances réglementées.
PRESIDENTIAL DIRECTIVE	DIRECTIVE PRÉSIDENTIELLE
A directive that provides the authority to seize or ascertained the forfeiture of commercial goods and conveyances Part 5 Chapter 1 of the Enforcement Manual.	Une directive qui donne le pouvoir de saisir à titre de confiscation compensatoire des marchandises et des moyens de transport commerciaux; Partie 5, Chapitre 1 du Manuel d'exécution.
PRIMA FACIE	PRIMA FACIE
This is Latin for "on its face." A prima facie case is one that at first glance presents sufficient evidence for the plaintiff to win. Such a case must be refuted in some way by the defendant for him to have a chance of prevailing at trial.	Il s'agit d'un mot latin qui signifie « à première vue ». Un cas prima facie est un cas qui, à première vue, présente des preuves suffisantes pour que le plaignant ait gain de cause. Un tel cas doit être réfuté d'une certaine façon par le défendeur pour que ce dernier ait une chance de l'emporter lors d'un procès.
PROCEEDS OF CRIME	PRODUITS DE LA CRIMINALITÉ
Proceeds of crime refers to any property, benefit or advantage, within or outside Canada, obtained or derived directly or indirectly as a result of "the commission in Canada of an enterprise crime offence or a designated substance offence, or an act or omission anywhere that, if it had occurred in Canada, would have constituted an enterprise crime offence or a designated substance offence."	Les produits de la criminalité sont des biens, des bénéfices ou des avantages qui sont obtenus au Canada ou à l'extérieur du Canada ou qui en proviennent, directement ou indirectement à la suite de la perpétration d'une infraction de criminalité organisée ou d'une infraction désignée en égard aux substances au Canada ou d'un acte ou d'une omission qui, au Canada, aurait constitué une infraction de criminalité organisée ou une infraction désignée en égard aux substances.
PROFILE	PROFIL
A profile refers to the compilation of multiple indicators that raise suspicion of an individual or companies activities due to knowledge of proven criminal activities that had the same or similar multiplicity of	Un profil représente la compilation de multiple indicateurs qui éveillent les soupçons à l'égard des activités d'une personne ou d'une entreprise à cause d'activités criminelles prouvées qui

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indicators.	possédaient les mêmes indicateurs ou des indicateurs semblables.
PROHIBITED GOODS	MARCHANDISES PROHIBÉES
This refers to goods that are prohibited importation into Canada under tariff items 9897.00.00, 9898.00.00, and 9899.00.00 of the <i>Customs Tariff</i> or under other legislation. For example, obscene publications, child pornography, and hate propaganda are prohibited importation under tariff item 9899.00.00. Certain types of agricultural goods are prohibited under legislation enforced by the Canadian Food Inspection Agency due to the risk of disease.	Marchandises dont l'importation au Canada est prohibée en vertu des numéros tarifaires 9897.00.00, 9898.00.00 et 9899.00.00 du <i>Tarif des douanes</i> ou en vertu de toute autre loi. Par exemple, le numéro tarifaire 9899.00.00 prohibe l'importation des publications obscènes, de la pornographie juvénile et de la propagande haineuse. Certains types de produits agricoles sont prohibés, en raison du risque de maladie, en vertu des dispositions législatives mises en vigueur par l'Agence canadienne d'inspection des aliments.
PROPERTY	BIENS OU PROPRIÉTÉ
a) real and personal property of every description and deeds and instruments relating to or evidencing the title or right to property, or giving a right to recover or receive money or goods,	a) les biens meubles et immeubles de tous genres, ainsi que les actes et instruments concernant ou constatant le titre ou droit à des biens, ou conférant le droit de recouvrer ou de recevoir de l'argent ou des marchandises;
b) property originally in the possession or under the control of any person, and any property into or for which it has been converted or exchanged and anything acquired at any time by the conversion or exchange, and	b) des biens originaires en la possession ou sous le contrôle d'une personne, et tous biens en lesquels ou contre lesquels ils ont été convertis ou échangés et tout ce qui a été acquis au moyen de cette conversion ou de cet échange;
c) any postal card, postal stamp or other stamp issued or prepared for issue under the authority of Parliament or the legislature of a province for the payment to the Crown or a corporate body of any fee, rate or duty, whether or not it is in the possession of the Crown or of any person.	c) toute carte postale, tout timbre postal ou autre timbre émis, ou préparé pour être émis, sous l'autorité du Parlement ou de la législature d'une province en vue du paiement, à la Couronne ou à une personne morale, d'honoraires, de droits ou de taxes, que les susdits soient ou non en la possession de la Couronne ou de quelque personne.

PROTECTED	PROTÉGÉ
Designated information lies outside the national interest, but is nevertheless sensitive and requires enhanced protection. Such information could reasonably be expected to be exempt or excluded under the <i>Access to Information Act</i> and the <i>Privacy Act</i> . There are three categories of designated information:	Les renseignements désignés ne sont pas classifiés comme étant d'intérêt national, mais sont jugés délicats et nécessitent quand même une protection rigoureuse. Ce type de renseignements pourraient vraisemblablement faire l'objet d'une exemption ou exception en vertu de la <i>Loi sur l'accès à l'information</i> et de la <i>Loi sur la protection des renseignements personnels</i> . Il y a trois catégories de renseignements désignés :
a) Protected A information would cause injury if released. This information includes sensitive or personal information of a routine nature, that if compromised could cause injury or embarrassment to a particular individual or organization.	a) La communication des renseignements Protégé A pourrait porter préjudice. Il s'agit de renseignements courants de nature délicate ou personnelle pouvant porter préjudice ou causer de l'embarras à quelqu'un ou à un organisme si l'intégrité des renseignements était compromise.
b) Protected B would cause serious injury. It is information considered particularly sensitive because the format in which it is held (e.g. microforms or computer tapes) creates a large volume of records with information on hundreds of individuals. Such information requires more stringent protection. Information can also be considered particularly sensitive because of its nature, for example: investigations into violations of law, solicitor-client privilege, and scientific material submitted to the CBSA.	b) La communication des renseignements Protégé B pourrait porter un préjudice grave. Il s'agit de renseignements particulièrement délicats parce que le support sur lequel ils sont conservés – microforme, bande pour ordinateur – contient un grand volume de renseignements sur des centaines de personnes. Ce genre de renseignements nécessitent davantage de protection. Des renseignements peuvent également être désignés « Protégé – nature particulièrement délicate » en raison de leur nature, par exemple : renseignements liés à des enquêtes sur des infractions à la loi, renseignements à protéger en raison du secret professionnel de l'avocat et documents scientifiques soumis à l'Agence.
c) Protected C would cause extremely serious injury. This	c) La communication des renseignements Protégé C

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extremely sensitive designation applies to a very limited amount of information concerning safety of individuals or law enforcement that if compromised, could cause extremely grave injury, such as loss of life.	pourrait porter un préjudice exceptionnellement grave. Cette désignation extrêmement délicate s'applique à un très faible volume de renseignements concernant la sécurité des personnes ou l'application de la loi; si l'intégrité de ces renseignements était compromise, il y aurait risque de préjudice extrêmement grave, voire, de perte de vie.
PUBLIC KEY INFRASTRUCTURE (PKI)	INFRASTRUCTURE À CLÉ PUBLIQUE (CHIFFREMENT ICP)
Public Key Infrastructure is a system of trust that secures the exchange of electronic information. Through the use of digital certificates, PKI ensures that information reaches its desired recipient. A PKI digital certificate enables us to use our electronic networks to send, receive, and access protected information securely. The CBSA requires the use of the Public Key Infrastructure for all applications that require Strong Two-Factor Identification and Authentication (Strong IA). These applications include CPIC Web, Secure Remote Access (SRA), encrypted email (Entrust), and LiveScan.	L'infrastructure à clé publique est un système de confiance qui protège les transmissions de renseignements électroniques. À l'aide de certificats numériques, l'ICP garantit que les données sont transmises au destinataire souhaité. Les certificats numériques de l'ICP nous permettent d'utiliser notre réseau électronique pour envoyer et recevoir de l'information protégée et y accéder de façon sécuritaire. L'ASFC exige l'utilisation de l'infrastructure à clé publique pour toutes les applications qui font appel au processus d'identification et d'authentification renforcée (processus IA renforcé). Le CIPC sur le Web, l'accès à distance protégé, le chiffrement du courrier électronique (Entrust) et LiveScan font partie de ces applications.
RADIOACTIVE MATERIALS/PRESCRIBED SUBSTANCES	MATIÈRES RADIOACTIVES / SUBSTANCES RÉGLEMENTÉES
These include: uranium, thorium, plutonium, neptunium, deuterium, their respective derivatives and compounds, and any other substances that the Canadian Nuclear Safety Commission may by regulation designate as being capable of releasing atomic energy, or as being required for its production, use or application of atomic energy. "Prescribed Substances" are also regulated under the <i>Nuclear Safety Control Act (NSCA)</i> .	Les matières radioactives comprennent l'uranium, le thorium, le plutonium, le neptunium, le deutérium, ainsi que leurs dérivés et composés respectifs, et toutes autres substances que la Commission canadienne de sûreté nucléaire (CCSN) peut, par règlement, désigner comme propres à dégager de l'énergie atomique, ou comme requises pour la production, l'usage ou l'application de l'énergie atomique. Les « substances

	réglementées » sont également réglementées en vertu de la <i>Loi sur la sûreté et la réglementation nucléaires (LSRN)</i> .
RANDOM ACCESS PERSONAL INFORMATION DATABASE (RAPID)	BASE DE DONNÉES D'ACCÈS DIRECTE AU RESEIGNEMENT PERSONNEL DE L'ARC (RAPID)
Canada Revenue Agency database providing information on individuals and businesses retrieved from the tax system.	Base de données de l'Agence du revenu du Canada qui contient de l'information sur les personnes et les entreprises extraites du système fiscal.
RANDOM REFERRAL	RENOI AU HASARD
Referrals based on a system, sometimes computer generated, which selects shipments and persons for examination in an indefinite pattern are considered random referrals.	Renvoi fondé sur un système, parfois généré par ordinateur, qui choisit des expéditions à examiner au hasard.
REAGENT	RÉACTIF
See Precursor.	Voir Précurseur.
REASONABLE GROUNDS (to believe or suspect)	MOTIFS RAISONNABLES (de croire ou de soupçonner)
An officer must have reasonable grounds to believe there was a contravention of the <i>Customs Act</i> (or in some cases the <i>Criminal Code</i>) before arresting a person. This refers to the honest belief of the existence of a state of circumstances, which assuming them to be true, would reasonably lead any ordinary, prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed.	Un agent doit avoir des motifs raisonnables de croire qu'une infraction à l'égard de la <i>Loi sur les douanes</i> (ou, dans certains cas, à l'égard du <i>Code criminel</i>) a été commise avant d'arrêter une personne. Conviction que, dans les circonstances données (en présumant qu'elles soient vraies), un homme avisé en viendrait raisonnablement à la conclusion qu'une infraction criminelle a été commise et que la personne est probablement coupable.
An officer must have reasonable grounds to suspect a contravention before detaining a person for the purposes of conducting a personal search or before continuing beyond a routine customs examination. These are circumstances/events, and/or indicators that infer non-compliance on the part of a person, and that would lead an officer to	Un agent doit avoir des motifs raisonnables de soupçonner qu'une infraction a été commise avant de détenir une personne en vue de procéder à une fouille personnelle ou avant d'approfondir un examen douanier de routine. Il existe des circonstances ou des événements et/ou des indicateurs susceptibles de témoigner, de la part d'une personne,

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suspect that a contravention of the <i>Customs Act</i> or other federal statute may have occurred. The threshold for suspicion is lower than that for believe.	d'une inobservation qui mène un agent à soupçonner qu'il peut y avoir eu infraction à la <i>Loi sur les douanes</i> ou à une loi fédérale. Le seuil établi pour les motifs de soupçonner est moins élevé que celui qui est établi pour les motifs de croire.
RECOVERY	ENFANT RETROUVÉ
A confirmed case of child abduction or a runaway/throwaway (whether or not it was reported as such to a competent authority) that has been brought to a resolution through the intervention of one or more of the four agencies involved in the Our Missing Children program	Un cas confirmé d'enlèvement d'enfant ou d'un fugueur ou laissé-pour-compte (peu importe si le cas a été signalé ou non comme tel à une autorité compétente) qui a été résolu au moyen d'une intervention d'un ou plusieurs des quatre organismes impliqués dans le programme Nos enfants disparus.
REDRESS	RECOURS
This refers to the authority for a client to request from the Minister a review of any enforcement action.	Il s'agit de l'autorité d'un client de demander au ministre l'examen d'une mesure d'exécution.
REFERRAL	RENOI
A referral is the result of designating selected persons, conveyances, and/or goods for further customs processing; most commonly from primary to secondary for activities such as payment of duties and taxes, examination, etc.	Un renvoi résulte de la désignation de personnes, moyens de transport et/ou marchandises sélectionnés à des fins de traitement douanier approfondi; le plus souvent, un renvoi est effectué de la ligne d'inspection primaire à l'inspection secondaire pour des activités comme le paiement des droits et taxes, des examens, etc.
There are three key types of referrals:	Il existe trois principaux types de renvois :
a) Mandatory Referral – A referral that a Border Service Officer must make for further documentation or examination, whether it is for CBSA purposes or for that of other government departments. Mandatory referrals can be based on a specific lookout or target, an alert, a computer generated "hit".	a) Renvoi obligatoire– Un renvoi auquel les agents des services frontaliers doivent procéder afin que des documents supplémentaires soient remplis ou que des examens plus approfondis soient effectués, aux fins de l'ASFC ou d'autres ministères du gouvernement. Les renvois obligatoires peuvent être fondés sur un avis de surveillance ou une cible, une alerte ou un avis d'interception établi par ordinateur, en particulier.

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b) Random Referral – Referrals based on a system, sometimes computer generated, which selects shipments and persons for examination in an indefinite pattern.	b) Renvoi au hasard – Un renvoi fondé sur un système, parfois établi par ordinateur, qui sélectionne des expéditions et des personnes à des fins d'examen, selon un modèle non défini.
c) Selective Referral – A referral that a Border Services Officer makes to the secondary inspection area following the establishment of point of finality because they have reasonable grounds to suspect that additional examination or investigation is necessary to make a decision on release.	c) Renvoi sélectif – Un renvoi par un agent des services frontaliers vers la zone d'inspection secondaire des douanes à la suite de l'établissement d'un point d'irrévocabilité parce que l'agent a des motifs raisonnables de soupçonner qu'un examen ou une enquête supplémentaire est nécessaire avant de prendre une décision en ce qui a trait au dédouanement.
REMOTE LOCATION	LOCATION ÉLOIGNÉE
A remote location refers to any off-site location where the CBSA provides a service and has one or both of the following attributes:	Toute location extérieure au sein duquel les douanes fournissent un service et qui possède au moins l'une des deux caractéristiques suivantes:
a) the estimated emergency response time is greater than 15 minutes; or	a) le temps estimé pour répondre à une urgence est de plus de 15 minutes;
b) known interruptions in communication such as dead zones with a supervisor or an emergency responder or a qualified third-party to provide incident management assistance.	b) des interruptions connues dans la communication surviennent (p. ex. zones mortes) et un superviseur, un intervenant en cas d'urgence ou une tierce partie qualifiée fournit une assistance à la gestion de la situation.
REPEAT OFFENDER	RÉCIDIVISTE
This refers to any importer who has been subjected to previous seizure/enforcement action within six years of the current violation. The term importer includes a corporation, business entity, society or organization, as well as an individual. The term also includes a family member who has been noted as an accompanying person on a previous seizure/enforcement	Il s'agit d'un importateur qui a été assujéti à des mesures antérieures de saisie ou d'exécution au cours des six années précédant l'infraction en question. L'expression importateur comprend une personne morale, une personnalité de l'entité, une entreprise ou un organisme ainsi que des personnes. Elle comprend également un membre de la famille qui

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action.	accompagnait la personne visée lors d'une mesure de saisie ou d'exécution antérieure.
REQUEST FOR DECISION	DEMANDE DE DÉCISION
This is a notice written by a person from whom goods have been seized, or by another person on their behalf, which states an objection to the seizure or to the terms of release, offered for seized goods. These terms can also apply to AMPS penalties.	Il s'agit d'un avis écrit par une personne dont les marchandises ont été saisies ou par une autre personne qui agit en son nom, qui présente une objection à l'égard de la saisie ou des conditions de mainlevée des marchandises saisies. Ces conditions peuvent également s'appliquer aux sanctions administratives pécuniaires.
RESERVATION SYSTEM	SYSTÈME DE RÉSERVATIONS
A Reservation system is any system, whether electronic or manual, that contains information relating to persons on board a commercial conveyance.	Un système de réservations est tout système, électronique ou manuel, qui contient des renseignements qui se rapportent aux personnes à bord d'un moyen de transport commercial.
RESIDENT	RÉSIDENT
A resident is a person who, in the settled routine of their life, makes their home, resides, and is normally present in Canada.	Toute personne qui, dans son cadre de vie habituel, établit son domicile, réside et est ordinairement présente au Canada.
RESULTANT (COMMERCIAL)	EXAMEN FRUCTUEUX (COMMERCIAL)
A "resultant" examination is a situation whereby the Canada Border Services Agency (CBSA) has identified, during the examination process, a contravention to the <i>Customs Act</i> and/or any other act of Parliament administered or enforced by the CBSA on behalf of other government organizations.	Un examen fructueux s'entend d'une situation où l'Agence des services frontaliers du Canada (ASFC) a constaté, au cours du processus d'examen, une infraction à la <i>Loi sur les douanes</i> , à la <i>Loi sur la protection des réfugiés</i> et de <i>l'immigration</i> , ou à toute autre loi du Parlement administrée ou appliquée par l'ASFC au nom de d'autres organismes gouvernementaux.
An examination is resultant if any one or more of the following actions occur during an examination:	On qualifiera d'examen fructueux si l'une ou plusieurs des actions suivantes se produit lors d'un examen:
1. Seizure	1. Saisie
2. Administrative and Monetary Penalty System (AMPS)	2. Régime de sanctions administratives pécuniaires (RSAP)
3. Ascertained Forfeiture	3. Confiscation compensatoire
4. Notice of Determination	4. Avis de détermination

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5. Inadmissible goods, by CBSA or other government organizations determination, that are ordered removed from Canada or sent for destruction	5. Marchandises inadmissibles, par décision de l'ASFC ou d'autres organismes gouvernementaux, qui sont retirées du Canada ou envoyées pour être détruites
Note: An examination is to be considered resultant at the stage of the examination at which this can be assessed. An exam shall not be considered resultant if a Border Services Officer (BSO) does not possess the adequate information for a definitive confirmation of this result.	Remarque : Un examen doit être considéré comme étant fructueux à partir de l'étape de l'examen où il est possible de le confirmer. Un examen ne peut pas être considéré comme étant fructueux si un agent des services frontaliers (ASF) ne détient pas l'information nécessaire pour confirmer de façon définitive le résultat de l'examen.
Following a resultant examination, the BSO will provide adequate details in the appropriate system(s).	Après un examen fructueux, l'ASF entrera les renseignements pertinents dans les systèmes appropriés.
RETENTION PERIOD	PÉRIODE DE CONSERVATION
For enforcement purposes, the retention period is the period of time a contravention remains on a client's file for the purpose of calculating an administrative monetary penalty (AMP).	Aux fins de l'exécution, la période de conservation est la période de temps pendant laquelle une infraction demeure dans le dossier d'un client pour le calcul d'une sanction administrative pécuniaire (SAP)
RISK	RISQUE
Risk is the chance of an event occurring that will adversely affect compliance with the CBSA mandate. Risk is measured in terms of probability, magnitude, and the significance of the loss or the injury. The level of risk is determined from the relationship between the likelihood of the event occurring and the consequences should the event occur, using both qualitative and quantitative factors.	Le risque est la possibilité que se produise un événement qui influera négativement sur le mandat de l'ASFC. Le risque se mesure en termes de probabilité, d'ampleur et d'importance de la perte ou du dommage. Le niveau de risque est déterminé à partir de la relation entre la possibilité qu'un événement se produise et les conséquences qui en découleraient, à l'aide de facteurs qualitatifs et quantitatifs.
RISK ASSESSMENT	ÉVALUATION DU RISQUE
This refers to the process used to determine the potential for or the existence of non-compliance and its effect on government objectives such as health, safety, security, and economy.	L'évaluation du risque est le processus servant à déterminer la possibilité ou l'existence de l'inobservation et de ses effets sur les objectifs du gouvernement, comme la santé, la sécurité et l'économie.
Risk assessment involves the identification, collection, and analysis of information pertaining to the risk, and the	L'évaluation du risque entraîne la détermination, la collecte et l'analyse des renseignements qui ont trait au risque, et

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development of hypotheses on the nature of the threat. Judgments are made on the likelihood of non-compliance, the level of impact on Canadian society, and the relative degree of risk. A level of risk is assigned based on the degree of damage that could occur should non-compliance remain undetected and corrective measures not be taken.	l'élaboration d'hypothèses quant à la nature de la menace. Il est jugé de la probabilité de l'inobservation et du degré des répercussions sur la société canadienne, ainsi que du degré relatif du risque. Un niveau de risque est attribué selon le degré des dommages qui peuvent se produire lorsque l'inobservation n'est pas décelée et que les mesures correctives appropriées ne sont pas prises.
In the CBSA environment, there are three levels of risk:	Dans l'environnement de l'ASFC, il existe trois niveaux de risque :
High - Will cause serious social or economic damage to the well being of Canadians. Requires close management and the preparation of a formal plan to manage the risk.	Élevé – Entraînera des dommages sociaux ou économiques au bien-être des Canadiens. Nécessite une gestion étroite et la préparation d'un plan officiel de gestion du risque.
Medium – Likely to cause some damage that will have an impact on socio-economic objectives. Requires some action such as formal and informal plans to address, control, and diminish the risk.	Moyen – Pourrait entraîner des dommages qui auraient des répercussions sur les objectifs socio-économiques. Nécessite certaines mesures comme des plans formels et informels afin de traiter, de contrôler et de réduire les risques.
Low– Unlikely to cause much damage or damage will not significantly impact on policy or objectives. This level of risk can be acceptable and additional action is not required; however, these risks should be monitored.	Faible – Il est peu probable que de tels risques entraînent des dommages ou alors les dommages causés n'auraient pas de répercussions importantes sur les politiques ou les objectifs. Le niveau de risque peut être acceptable et des mesures supplémentaires ne sont pas nécessaires; toutefois, les risques en question doivent être contrôlés.
RISK INDICATOR	INDICATEUR DE RISQUE
A risk indicator differs from an "indicator" as it is not for a specific good, commodity, or conveyance.	Un indicateur de risque diffère d'un « indicateur » étant donné qu'il ne concerne pas des marchandises ou des moyens de transport précis.
RISK MANAGEMENT	GESTION DU RISQUE
This is a systematic method of identifying,	Il s'agit d'une méthode systématique

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evaluating, and controlling potential adverse events and consequences. Risk is measured in terms of probability, magnitude, and the significance of the loss or injury.	servant à identifier, évaluer et contrôler les événements et les conséquences adverses possibles. Le risque est mesuré en termes de probabilité et d'importance des pertes ou des blessures.
In the customs environment, risk management is a multi-layered strategy to sort out suspicious persons, goods, or conveyances from the legitimate movement of people or goods. This strategy is focused on the use of good strategic and tactical intelligence but also relies heavily on the screening of advance pre-arrival information to select high-risk persons, goods, or conveyances for inspection.	Dans l'environnement des douanes, la gestion du risque est une stratégie à plusieurs niveaux visant à distinguer les personnes, les marchandises et les moyens de transport suspects des personnes et des marchandises légitimes. Cette stratégie vise surtout l'utilisation d'un bon renseignement stratégique et tactique et elle dépend également en grande partie du ciblage d'informations préalables afin de sélectionner les personnes, les marchandises et les moyens de transport à risque élevé à des fins d'inspection.
It allows us to achieve compliance with legislative requirements through a blend of facilitation and enforcement. It also provides management with concrete information to make decisions on existing and emerging threats and to allocate resources to high-risk areas.	La gestion du risque nous permet d'assurer l'observation à l'égard des exigences législatives au moyen de la facilitation et de l'exécution. Elle fournit également à la direction des renseignements concrets afin de lui permettre de prendre des décisions en ce qui a trait aux menaces actuelles et nouvelles et d'affecter les ressources aux secteurs à risque élevé.
RISK TABLE	TABLEAU DES RISQUES
A risk table is an electronic listing of the values which cause a specific indicator to hit/fire. For example, an indicator for Vague Commodity Description will fire on values such as "STC" (Said To Contain) and "FAK" (Freight of All Kinds) and these values will be listed in a "risk table".	Liste électronique des valeurs qui entraînent le déclenchement d'un indicateur donné. Par exemple, un indicateur de description vague de produit vise des valeurs telles que « STC » (Déclaré contenir) et « FAK » (fret de toutes sortes) et ces valeurs seront énumérées dans un « tableau des risques ».
ROUTINE CUSTOMS PROCESSING	TRAITEMENT DOUANIER DE ROUTINE
This refers to all the reasonable delays that a traveller can expect to face at customs, from both primary and secondary processing, up to and including seizure action but excluding personal searches and arrests. It includes: questioning of persons arriving in Canada, the inspection	Traitement douanier de routine – Ensemble des formalités raisonnables qu'un voyageur peut s'attendre à subir aux douanes, tant à la ligne d'inspection primaire qu'à l'examen secondaire; ces formalités peuvent aller jusqu'à la saisie mais excluent la fouille personnelle et

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of baggage, pockets, wallets, and purses, examination of the conveyance, and frisk or pat down of outer clothing.	l'arrestation. Il s'agit notamment de l'interrogation des personnes qui arrivent au Canada, de l'inspection des bagages, des poches, des portefeuilles et des sacs à main, de l'examen des véhicules, de la fouille corporelle ou de la palpation des vêtements.
ROVING	MARAUDAGE
This refers to the act of observing and interviewing travellers in non-traditional CBSA controlled areas to identify possible non-compliance particularly pertaining to contraband. Roving may be conducted in any CBSA - customs controlled area (i.e. pre-PIL, post PIL, in the secondary examination area, around baggage carousels, etc.)	Cette méthode consiste à observer et à interroger des voyageurs qui se trouvent dans des zones de contrôle des douanes non traditionnelles afin d'identifier les cas possibles d'inobservation, plus particulièrement en matière de contrebande. Le maraudage peut s'effectuer dans toutes les zones de contrôle des douanes de l'ASFC (c.-à-d. la zone préalable à la LIP, la zone qui se trouve après la LIP, la zone d'inspection secondaire, la zone qui entoure le distributeur circulaire des bagages, etc.)
RUNAWAYS	LES FUGUEURS
Children who leave home voluntarily without the knowledge or permission of the parent or guardian.	Les fugueurs sont les enfants qui quittent leur maison volontairement à l'insu ou sans la permission du parent ou du tuteur
RUNNING THE PORT	DÉFAUT DE S'ARRÊTER AU BUREAU DE DOUANE
This refers to a contravention involving the act of passing through, failing to remain or leaving the confines of a CBSA - customs office in defiance of an officer's instructions.	Il s'agit d'une infraction qui consiste à passer au bureau de douane sans s'arrêter, d'omettre d'y rester ou de quitter la zone d'un bureau de douane de l'ASFC en passant outre les directives d'un agent.
SANCTIONS	SANCTIONS
Sanctions are measures, which in the case of AMPS, are a warning or fine to enforce a law and deter future non-compliance.	Les sanctions sont des mesures qui, dans le cas du RSAP, représentent un avertissement ou une amende afin de respecter une loi et de prévenir tout cas ultérieur d'inobservation.
SCENARIO	SCÉNARIO
A grouping of specific data elements and	Regroupement d'éléments de données

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rules which when met would result in a traveller being suspected of being high-risk.	particuliers et de règles, qui se traduit par le repérage des voyageurs soupçonnés de poser un risque élevé.
SCENARIO-BASED TARGETING (SBT)	CIBLAGE FONDÉ SUR DES SCÉNARIOS (CFS)
The automated process of using pre-determined sets of data elements and rules which are supported by intelligence information, to identify suspected high-risk travellers prior to their arrival in Canada.	Processus automatisé de ciblage ayant recours à des ensembles prédéterminés d'éléments de données et de règles qui est appuyé par le renseignement, pour repérer les voyageurs à risque élevé avant leur arrivée au Canada.
SEARCH	FOUILLE
When you believe on reasonable grounds that the <i>Customs Act</i> has been violated or that a person is attempting to circumvent the <i>Customs Act</i> , you may search any person: Who has arrived in Canada; Within a reasonable time after their arrival in Canada; About to leave Canada; or Who has had access to an area for use by persons about to leave Canada, and Who leaves that area but does not leave Canada, Within a reasonable time after they leave the area. Personal, baggage or conveyance searches under the Act may be performed.	Lorsque vous soupçonnez, pour des motifs raisonnables, que la <i>Loi sur les douanes</i> a été enfreinte ou qu'une personne tente d'y contrevenir, vous pouvez fouiller toute personne : entrée au Canada, dans un délai justifiable suivant son arrivée; sur le point de sortir du Canada; ou qui a eu accès à une zone réservée aux personnes sur le point de sortir du Canada et qui quitte cette zone sans sortir du Canada, dans un délai justifiable après son départ de cette zone. Une fouille personnelle, une fouille des bagages et du moyen de transport peut être effectuée en application de la Loi.
SEARCH OF A PERSON	FOUILLE D'UNE PERSONNE
An officer may search a person when there are reasonable grounds to suspect that the person has secreted on or about his person any goods the importation or exportation of which is prohibited, controlled or regulated under the <i>Customs Act</i> or any other Act of Parliament. A search of a person may vary in intensity. The officer may search any person:	Un agent peut fouiller une personne lorsqu'il a des motifs raisonnables de soupçonner que la personne dissimule sur elle ou près d'elle tout objet dont l'importation ou l'exportation est prohibée, contrôlée ou réglementée en vertu de la <i>Loi sur les douanes</i> ou de toute autre loi du Parlement. La fouille d'une personne peut varier en intensité. Un agent peut fouiller :
a) who has arrived in Canada, within a reasonable time after their arrival in Canada;	a) toute personne qui est entrée au Canada dans un délai justifiable suivant son arrivée;
b) who is about to leave Canada; or	b) toute personne sur le point de sortir du Canada;
c) who has had access to an area	c) toute personne qui a eu accès à

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for use by persons about to leave Canada, and who leaves that area but does not leave Canada, within a reasonable time after they leave the area.	une zone réservée aux personnes sur le point de sortir du Canada et qui quitte cette zone sans sortir du Canada, dans un délai justifiable après son départ de cette zone.
For examination of personal baggage or conveyances see "Examination".	Pour l'examen des bagages personnels ou d'un moyen de transport, voir « Examen ».
SECRET	SECRET
See Security Classification.	Voir Classification de sécurité.
SECURE TRACKING SYSTEM (STS)	SYSTÈME DE SUIVI SÉCURITAIRE (SSS)
The STS contains information on individuals involved in and/or associated with any organization involved in war crimes, crimes against humanity and/or terrorist activities, organized crime, money laundering, terrorist financing, people smuggling, or persons associated with criminal organizations, and whose admission or presence in Canada may be contrary to immigration or citizenship legislation.	Le Système de suivi sécuritaire (SSS) contient des renseignements sur les personnes participant à une organisation ou associée à une organisation se livrant à des crimes de guerre, à des crimes contre l'humanité et/ou à des activités terroristes, au crime organisé, au blanchiment d'argent, au financement des activités terroristes ou au passage de clandestins, ou sur les personnes faisant partie d'organisations criminelles, et dont l'admission ou la présence au Canada pourrait être contraire à la législation sur l'immigration ou la citoyenneté.
SEDITIONOUS NATURE	NATURE À FOMENTER LA SÉDITION
Goods that advocate the use of force, without the authority of law, as a means of accomplishing governmental change within Canada, are seditious. This definition comes from sections 59 and 60 of the <i>Criminal Code of Canada</i> . The importation of goods of a seditious nature is prohibited under tariff item 9899.00.00.	Les marchandises qui sont de nature à fomenter la sédition sont, par exemple, les marchandises qui préconisent l'usage, sans l'autorité des lois, de la force comme moyen d'opérer un changement de gouvernement au Canada. Cette définition provient des articles 59 et 60 du <i>Code criminel du Canada</i> . L'importation de marchandises de nature à fomenter la sédition est prohibée en vertu du numéro tarifaire 9899.00.00.
SECURITY CLASSIFICATION	CLASSIFICATION DE SÉCURITÉ
This is a category to which national security information and material is	Il s'agit d'une catégorie attribuée aux renseignements et aux documents sur la

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assigned to denote the degree of damage that unauthorized disclosure would cause to the national defence or foreign relations of Canada and to denote the degree of protection required.	sécurité nationale afin d'indiquer le niveau de dommages que la communication non autorisée pourrait entraîner à la défense nationale ou aux relations étrangères du Canada et d'indiquer le degré de protection nécessaire.
There are three levels of security classification:	Il existe trois niveaux de classification de sécurité :
a) Confidential - Information whose unauthorized disclosure, destruction, removal, modification, or interruption could reasonably be expected to cause injury to the national interest of Canada.	a) Confidentiel - Renseignements dont la divulgation, la destruction, l'élimination, la modification ou l'interruption de transmission sans autorisation pourrait raisonnablement porter un préjudice à l'intérêt national.
b) Secret - Information whose unauthorized disclosure, destruction, removal, modification, or interruption could reasonably be expected to cause <u>serious</u> injury to the national interest of Canada.	b) Secret - Renseignements dont la divulgation, la destruction, l'élimination, la modification ou l'interruption de transmission sans autorisation pourrait raisonnablement porter un préjudice <u>grave</u> à l'intérêt national.
c) Top Secret - Information whose unauthorized disclosure, destruction, removal, modification, or interruption could reasonably be expected to cause <u>grave</u> injury to the national interest of Canada.	c) Très secret - Renseignements dont la divulgation, la destruction, l'élimination, la modification ou l'interruption de transmission sans autorisation pourrait raisonnablement porter un préjudice <u>exceptionnellement grave</u> à l'intérêt national.
SEIZURE ACTION	SAISIE
An action whereby the Crown takes physical possession of goods that have become the property of the Crown (i.e. goods that have been forfeited).	Toute mesure par laquelle la Couronne prend physiquement possession de marchandises qui sont devenues sa propriété, par exemple des marchandises qui ont été confisquées
SELECTIVE EXAMINATION	EXAMEN SÉLECTIF
An inspection of limited intensity applied to baggage, conveyances, or commercial shipments. Such an examination includes all baggage or goods accompanying a traveller and all readily accessible areas of the vehicle.	Toute inspection d'intensité limitée s'appliquant à des bagages, des moyens de transport ou des expéditions commerciales. Cet examen comprend l'examen des bagages et des marchandises accompagnant le voyageur et l'examen de toutes les parties du véhicule facilement accessibles.

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SELECTIVITY	SÉLECTIVITÉ
This refers to the process of selecting ranges/areas of potential risk in order to obtain information pertaining to compliance verification. Information obtained through the selectivity process may result in the development of a target.	Il s'agit du processus qui consiste à sélectionner les niveaux et les secteurs de risque possible afin d'obtenir des renseignements pour la vérification de l'observation. Les renseignements obtenus au moyen du processus de sélectivité peuvent entraîner l'élaboration d'une cible.
SENIOR OFFICER	AGENT PRINCIPAL
A senior officer is someone of a higher rank who is responsible for operations at the applicable office. The senior officer may be a superintendent, chief, duty manager, etc. The senior officer may designate another officer to act in his place, and this person becomes the senior officer. Where there is no higher-ranking officer at the local office, the officer must contact the designated senior officer who is responsible for the operation at that location. The term "a senior officer" is used in the Customs Act (e.g. section 98(3) – A senior officer before whom a person is taken...).	Un agent principal est une personne de rang supérieur qui est responsable des opérations dans un bureau applicable. Un agent principal peut être un surintendant, un chef, un directeur de service, etc. L'agent principal peut désigner un autre agent pour agir en son nom et cet autre agent devient alors l'agent principal. Lorsque aucun agent de rang supérieur n'est présent dans un bureau local, l'agent doit communiquer avec l'agent principal désigné qui est responsable des opérations à cet endroit. L'expression « agent principal » est utilisée dans la <i>Loi sur les douanes</i> (p. ex. article 98(3) – L'agent principal, selon qu'il estime...).
SERIOUS CRIME	INFRACTION GRAVE
"Serious Crime" shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.	L'expression « infraction grave » désigne un acte constituant une infraction passible d'une peine privative de liberté dont le maximum ne doit pas être inférieure à quatre ans ou d'une peine plus lourde.
SIMILAR GOODS	MARCHANDISES SIMILAIRES
Imported goods are goods that closely resemble other goods being imported in respect of the component materials and/or characteristics and are capable of performing the same function.	Marchandises importées dont les matières constitutives et les caractéristiques ressemblent beaucoup à celles d'autres marchandises importées et qui peuvent remplir la même fonction.
SMUGGLING	CONTREBANDE
Smuggling is an allegation used to	Allégation utilisée pour décrire l'infraction

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describe a criminal contravention of the <i>Customs Act</i> that occurs when a person intentionally evades the payment of duties by bringing dutiable goods into Canada without declaring them to customs OR deliberately brings goods into Canada which are prohibited, controlled or regulated under any Act of Parliament, without declaring them to customs.	criminelle à la <i>Loi sur les douanes</i> que commet la personne qui élude intentionnellement le paiement de droits en introduisant au Canada des marchandises assujetties à des droits sans les déclarer aux Douanes OU qui introduit délibérément au Canada sans les déclarer aux Douanes des marchandises dont l'importation est prohibée, contrôlée ou réglementée en vertu d'une loi fédérale.
SOLICITOR-CLIENT PRIVILEGE	SECRET PROFESSIONNEL DE L'AVOCAT
This refers to the right that a person has, in a superior court in the province where the matter arises, to refuse to disclose an oral or documentary communication on the ground that the communication is one passing between the person and the person's lawyer in professional confidence. For the purposes of intelligence gathering, an accounting record of a lawyer, including any supporting voucher or cheque, is not protected under solicitor-client privilege. Correspondence between a solicitor and client is privileged when imported.	Droit que possède une personne qui se présente devant une cour supérieure d'une province de refuser de divulguer la teneur d'une communication orale ou documentaire parce qu'elle aurait eu lieu entre la personne et son avocat dans un contexte confidentiel. Aux fins de la collecte de renseignements, un document comptable délivré par un avocat, notamment une pièce justificative ou un chèque, n'est pas protégé par le secret professionnel de l'avocat. La correspondance entre un avocat et son client est protégée lorsqu'elle est importée.
SOLVENT	SOLVANT
See Precursor.	Voir Précurseur.
SOURCE COUNTRY	PAYS SOURCE
This refers to a region, country, or area known to be a source of production of certain goods (i.e. drugs; pornography).	Il s'agit d'une région, d'un pays ou d'un secteur reconnu comme source de production de certaines marchandises (c.-à-d. drogue, pornographie).
SPECIFIED GOODS	MARCHANDISES DÉSIGNÉES
Specified goods are commercial goods mentioned in the Presidential Directive contained in Part 5 Chapter 1 of the Enforcement Manual that are subject to AMPS and seizure without terms of release (or, ascertained forfeiture where the goods are not available for seizure). Specified goods are:	Les marchandises spécifiées sont des marchandises commerciales mentionnées dans la Direction présidentielle énoncée dans la Partie 5, Chapitre 1 du Manuel d'exécution qui sont assujetties aux sanctions administratives pécuniaires et à la saisie sans conditions de mainlevée (ou la confiscation compensatoire lorsque les

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	marchandises ne sont pas disponibles pour la saisie). Les marchandises suivantes sont des marchandises désignées :
Alcohol, ethyl alcohol, and spirits	Alcool, alcool éthylique et spiritueux
Beer or malt liquor	Bière ou liqueur de malt
Wine	Vin
Tobacco products	Produits du tabac
Weapons and ammunition set out under tariff item 9898.00.00	Armes et munitions mentionnées dans le numéro tarifaire 9898.00.00
Firearms	Armes à feu
Controlled substances (drugs) as defined in the <i>Controlled Drugs and Substances Act</i>	Substances contrôlées (drogues) au sens de la Loi réglementant certaines drogues et autres substances
Child pornography	Pornographie juvénile
Conveyances modified for smuggling purposes	Moyens de transport modifiés à des fins de contrebande
Controlled goods whose export would pose a security risk	Les marchandises contrôlées dont l'exportation causerait un risque de sécurité
Note: This list may be expanded in the future.	Nota : D'autres éléments pourraient être ajoutés à la présente liste à l'avenir.
SPONTANEOUS DECLARATION	DÉCLARATION SPONTANÉE
This refers to a declaration made at the very moment of an event before the mind has the opportunity to contrive a false statement.	Déclaration faite au moment où se produit un événement, avant que la personne ait eu le temps d'inventer une fausse déclaration.
STATE DRUGS	DROGUES D'ÉTAT
These drugs have either been legally produced by the state or have been forfeited to the crown for use in controlled deliveries. These may legally be imported into Canada if accompanied with the proper documentation.	Il s'agit de drogues qui ont été produites légalement par l'État ou qui ont été confisquées au profit de l'État à des fins d'utilisation dans des livraisons contrôlées. Ces drogues peuvent être importées légalement au Canada lorsqu'elles sont accompagnées des documents appropriés.
STATEMENT	DÉCLARATION
A statement is an oral or written declaration of matters of fact. A statement given to a person in authority is not admissible in evidence unless it is free and voluntary.	Une déclaration est un énoncé oral ou écrit de questions de fait. Une déclaration faite à une personne en position d'autorité n'est pas recevable en tant que preuve à moins d'avoir été libre et volontaire.

STATUTE	LOI
A statute is an Act of the federal Parliament or a provincial legislature adopted pursuant to constitutional authority.	Texte législatif du parlement fédéral ou d'une assemblée législative provinciale édicté en application d'une compétence constitutionnelle.
STRIP SEARCH	FOUILLE À NU
See Search.	Voir Fouille.
STRANGER ABDUCTIONS	LES ENLÈVEMENTS PAR UN ÉTRANGER
Children that are taken by a person who is not their parent or legal guardian and without the knowledge or against the wishes of the parent or legal guardian.	Les enfants qui sont enlevés par une personne qui n'est ni leur parent ni leur tuteur légal et à l'insu ou contre la volonté du parent ou du tuteur légal.
STRATEGIC GOODS	MARCHANDISES STRATÉGIQUES
Strategic goods and technologies are subject to export controls and include arms, ammunition, implements of war, weapons-related materials, or any goods or technologies whose unauthorized export might be contrary to Canadian security, political and international interests.	Les marchandises et les technologies stratégiques peuvent faire l'objet de contrôles à l'exportation et elles comprennent les armes, les munitions, le matériel de guerre, le matériel lié aux armes et toutes marchandises ou technologies dont l'exportation non autorisée pourrait être contraire aux intérêts politiques, internationaux et en matière de sécurité du Canada.
STREET DRUGS	DROGUES ILLICITES
These are drugs that have been seized by another enforcement agency and are allowed to enter Canada as a controlled delivery for prosecution purposes. These may be carried by a foreign police/law enforcement officer.	Il s'agit des drogues qui ont été saisies par d'autres organismes d'exécution de la loi et dont l'entrée au Canada est autorisée à titre de livraison contrôlée à des fins de poursuite. Ces drogues peuvent être transportées par un agent d'exécution de la loi ou un policier étranger.
SUBPOENA	ASSIGNATION (SUBPOENA)
This is a command to appear at a certain time and place to give testimony upon a certain matter. It may also require the production of books, papers, etc.	Ordre donné à une personne de se présenter à une date et à une heure précise pour témoigner sur un certain sujet. Ce document peut aussi exiger la

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	production de livres, de documents, etc.
SUMMARY CONVICTION OFFENCE	INFRACTION SUSCEPTIBLE DE DÉCLARATION DE CULPABILITÉ PAR PROCÉDURE SOMMAIRE
Where any piece of legislation creates an offence, it is automatically a summary conviction offence unless specifically stated to be otherwise, e.g., to be indictable. Summary conviction (criminal) offences are normally considered to be less serious offences.	Une infraction qui est poursuivie par procédure sommaire. Les infractions où il y a déclaration de culpabilité par procédure sommaire sont considérées comme des infractions moins graves.
SUMMONS	SOMMATION
A document to compel the attendance in court of a person charged with an offence. A summons in Form 6 issued by a justice or judge.	Document sommant une personne accusée d'une infraction de comparaître devant un tribunal. Citation selon la formule 9 délivrée par un juge de paix ou un juge.
SURVEILLANCE	SURVEILLANCE
This refers to concentrated observation of a pre-determined target (person or place) utilizing various systems and methodology. This may involve coordination with outside law enforcement agencies.	Toute observation intense d'une cible préétablie (personne ou lieu) au moyen de systèmes et de méthodes diverses, y compris les responsabilités conjointes avec des organismes de l'extérieur.
TARGET	CIBLE
A type of referral that uses advance information to identify suspect high-risk people, goods and conveyances that may pose a risk to national security and/or public safety priorities.	Un type de renvoi basé sur l'information préalable qui identifie les personnes, les marchandises et les transports qui posent un risque élevé à la sécurité nationale et/ou aux priorités de la sécurité publique du Canada.
TARGETING	CIBLAGE
The process of identifying suspect high-risk people, goods and conveyances through a deductive reasoning process utilizing advance information, technology and intelligence products.	Le ciblage est le processus pour identifier les personnes, les marchandises et les transports qui posent un risque élevé par un processus de raisonnement déductif utilisant l'information préalable, la technologie, et les produits du renseignement.

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TARGETING OFFICER	AGENT DE CIBLAGE
A CBSA employee who has been assigned targeting duties to identify suspect high-risk people, goods and conveyances for examination.	Un employé de l'ASFC qui est affecté au ciblage pour identifier pour examen, les personnes, les marchandises et les transports qui posent un risque élevé.
TECHNICAL REFERENCE SYSTEM (TRS)	SYSTÈME DE RÉFÉRENCE TECHNIQUE (SRT)
TRS is an automated storage and retrieval system containing information relating to classification and other decisions. The Technical Reference System is widely used by Trade Administration Services officers. Where it is available to Border Services officers, it is used to verify whether goods have been reviewed and determined to be prohibited under tariff item 9899.00.00 or admissible.	Le SRT est un système automatisé de stockage et de récupération des données qui contient des renseignements en matière de classement et d'autres décisions. Le Système de référence technique est beaucoup utilisé par les agents des Services d'administration des politiques commerciales. Lorsqu'il est à la disposition des agents des services frontaliers, il est utilisé afin de vérifier si des marchandises ont été examinées et s'il a été établi que ces marchandises étaient admissibles, ou prohibées en vertu du numéro tarifaire 9899.00.00.
TERMS OF RELEASE	CONDITIONS DE MAINLEVÉE
This is the monetary amount required to be paid to the Agency to obtain release of a seized conveyance or goods and any terms or conditions affecting such release.	La somme qui doit être versée au Ministère pour obtenir la mainlevée d'un moyen de transport ou de marchandises saisies ainsi que toutes les conditions touchant les mainlevées en question.
TERRITORIAL JURISDICTION	RESSORT TERRITORIAL
Any province, county, union of counties, township, city, town, parish or the judicial division or place to which the context (in this case a Warrant to Arrest) applies.	Province, comté, regroupement de comtés, canton, cité, ville, paroisse ou circonscription judiciaire ou lieu auquel le contexte s'applique (dans le présent cas, un mandat d'arrestation)
TERRORISM	TERRORISME
Terrorism is the deliberate and systematic use or threat of violence against individuals, property and/or institutions, acting in opposition to the established authority, to create a climate of fear and alarm and further certain	Le terrorisme est défini comme étant l'utilisation ou la menace de la violence délibérée et systématique contre des personnes, des biens ou des établissements, dans le but de s'opposer à l'autorité établie, de créer un climat de

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political/ideological objectives.	crainte et de panique, et de promouvoir certains objectifs politiques ou idéologiques.
TERRORIST ACTIVITY	ACTIVITÉS TERRORISTES
"Terrorist activity" has the same meaning as in subsection 83.01 (1) of the <i>Criminal Code</i> .	L'expression « activité terroriste » a la même signification que la définition donnée au paragraphe 83.01(1) du Code criminel.
THIRD PARTY CLAIM	REVENDEICATION DES TIERS
A statement or assertion made by a person or persons, other than the person from whom goods have been seized, claiming that they have an interest in or the right of ownership to the goods which have been seized.	Déclaration ou affirmation d'une ou plusieurs personnes autres que la personne de qui les marchandises ont été saisies qui prétendent avoir un droit sur les marchandises saisies à titre de propriétaire ou à un autre.
THIRD PARTY RULE	RÈGLEMENT TOUCHANT UNE TIERCE PERSONNE
Information from one law enforcement agency cannot be passed to another without the expressed consent of the originator.	Les renseignements provenant d'un organisme d'exécution de la loi ne peuvent pas être communiqués à un autre organisme sans le consentement explicite de l'auteur.
THREAT ASSESSMENT	ÉVALUATION DES MENACES
See Risk Assessment.	Voir Évaluation du risque.
THROWAWAYS (CHILDREN)	LES LAISSÉS POUR COMPTE (ENFANTS)
Children whose whereabouts are both unknown and unsought by the parents or guardians and who are unable to return to the family home due to mostly irresolvable issues within the family	Les enfants pour qui le lieu où ils se trouvent est à la fois inconnu et non recherché par les parents ou les tuteurs et qui ne sont pas en mesure de revenir à la maison familiale principalement en raison de problèmes non résolus au sein de la famille.
TITAN	TITAN
TITAN is a commercial risk assessment system that automates many of the manual paper based targeting processes performed by CBSA. The system provides	TITAN est un système d'évaluation des risques que posent les expéditions commerciales qui automatise de nombreux processus de ciblage manuels

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automated risk assessment of all incoming cargo shipments prior to their arrival in Canada. This is achieved through automated case management and through display of critical pieces of pre-arrival information in a manner that facilitates manifest review.	basés sur des documents papier de l'ASFC. Le système permet l'évaluation automatisée des risques de toutes les expéditions de fret avant leur arrivée au Canada, grâce à la gestion automatisée des cas et à l'affichage des renseignements essentiels avant l'arrivée de façon à faciliter l'examen des manifestes.
TOP SECRET	TRÈS SECRET
See Security Classification.	Voir Classification de sécurité.
TREASONABLE NATURE	NATURE À FOMENTER LA TRAHISON
Goods that advocate the use of force or violence to overthrow the government of Canada or a province/territory or which communicates or makes available, without lawful authority, to an agent of a state other than Canada, military or scientific information that may be used by that state for a purpose prejudicial to the safety or defence of Canada. This definition comes from section 46 of the <i>Criminal Code of Canada</i> . The importation of goods of a treasonable nature is prohibited under tariff item 9899.00.00.	Les marchandises qui sont de nature à fomenter la trahison sont les marchandises qui préconisent le recours à la force ou à la violence en vue de renverser le gouvernement du Canada ou d'une province, ou qui communiquent à un agent d'un État autre que le Canada, ou met à la disposition d'un tel agent, sans autorisation légitime, des renseignements d'ordre militaire ou scientifique, lesquels peuvent servir à des fins préjudiciables à la sécurité ou à la défense du Canada. Cette définition provient de l'article 46 du <i>Code criminel du Canada</i> . L'importation de marchandises de nature à fomenter la trahison sont prohibées en vertu du numéro tarifaire 9899.00.00.
TREASURY ENFORCEMENT COMMUNICATION SYSTEM (TECS)	TREASURY ENFORCEMENT COMMUNICATION SYSTEM (TECS)
TECS is owned and managed by the U.S. Department of Homeland Security's (DHS) component U.S. Customs and Border Protection (CBP). It is the principal system used by US CBP officers at the border to assist with screening and determinations regarding admissibility of arriving persons.	Le TECS est la propriété du Service des douanes et de la protection des frontières (SDPF) du Département de la Sécurité intérieure des États-Unis et est géré par lui. Il s'agit du principal système utilisé par les agents américains à la frontière pour effectuer le contrôle et prendre les décisions sur l'admissibilité des personnes arrivant au pays.
TREND	TENDANCE

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This refers to a statistically detectable line of direction or movement in a measurable period of time.	Une tendance se définit comme étant une orientation ou un mouvement statistiquement observable au cours d'une période mesurable.
In law enforcement, trend refers to a method of operation used in criminal activity that has been, is, and/or may be popular.	En matière d'exécution de la loi, une tendance se rapporte à une méthode d'opération utilisée dans des activités criminelles qui a été, qui est et(ou) qui pourrait s'avérer populaire.
TROIKA	TROIKA
A Contraband and Intelligence database that contains export control information.	Une base de données de la Contrebande et du Renseignement qui contient des renseignements sur le contrôle des exportations.
UNDERVALUATION	SOUS-ÉVALUATION
A contravention of section 32 of the <i>Customs Act</i> that occurs when goods are declared at a false value to CBSA, usually in writing, to evade duties lawfully payable.	Infraction à l'article 32 de la <i>Loi sur les douanes</i> qui consiste à déclarer des marchandises à l'ASFC, généralement par écrit, afin d'éviter le paiement des droits à payer.
UNTRUE STATEMENT	FAUSSE DÉCLARATION
A contravention of the <i>Customs Act</i> that occurs when goods are declared at CBSA, but an untrue written or oral statement is made regarding description, value, origin, or acquisition of goods to enable them to be entered without full payment of duties and taxes.	Infraction à la <i>Loi sur les douanes</i> qui consiste à déclarer des marchandises aux douanes en faisant une fausse déclaration verbale ou écrite afin de pouvoir importer les marchandises sans payer le plein montant des droits et des taxes exigibles.
VERBATIM	VERBATIM
Verbatim means word-for-word or in the exact words.	Verbatim signifie mot-à-mot ou textuellement.
VISUAL TAILGATE CHECK	CONTRÔLE VISUEL/DEPUIS LA PORTE ARRIÈRE
This occurs when the doors of a conveyance or container are opened and up to 25% of the load is examined. The shipment may be examined for contraband, tariff issues, or other government department health and safety issues.	Ce contrôle est effectué lorsque les portes d'un moyen de transport ou d'un conteneur sont ouvertes et que le chargement est examiné dans un pourcentage maximum de 25 %. L'expédition peut être examinée pour des raisons de contrebande, de questions

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	tarifaires ou de questions de santé ou de sécurité touchant les autres ministères.
VOIR DIRE	VOIR-DIRE
This is a trial within a trial. A hearing to determine the admissibility of evidence. In a jury trial, jury members will be excluded from the courtroom. The judge will determine the admissibility of the evidence and determine whether the jury should hear it.	Procès à l'intérieur d'un procès. Une audience visant à déterminer l'admissibilité d'une preuve. Dans un procès devant jury, les membres du jury sont alors exclus de la salle d'audience, et le juge doit déterminer si la preuve est admissible et si elle devrait être entendue par le jury.
VOLUNTARY	VOLONTAIRE
With regard to statements made by an accused, voluntary means it has not been obtained from the accused either by fear of prejudice or hope of advantage exercised or held out by a person in authority.	En ce qui a trait aux déclarations verbales faites par un accusé, une déclaration volontaire signifie qu'elle a été obtenue de la part de l'accusé sans qu'il craigne de subir un préjudice ou ait l'espoir d'obtenir un avantage de la part d'une personne en position d'autorité.
VOLUNTARY DISCLOSURE	DIVULGATION VOLONTAIRE
This refers to a correction, made in good faith, by any commercial or non-commercial importer, of any errors or omissions in reporting obligations under the <i>Customs Act</i> . To promote voluntary disclosures with CBSA laws, the CBSA encourages all individuals and commercial importers to come forward and correct any deficiencies in their reporting to the Agency. In order to be considered voluntary, the disclosure must be made within the spirit and intent of the policy, and further, must be made before any audit, investigation, or other enforcement action is begun. No disclosure is considered voluntary until all the information is verified.	Il s'agit d'une correction effectuée de bonne foi, par un importateur commercial ou non commercial, de toute erreur ou omission en ce qui a trait aux obligations en matière de déclarations, en vertu de la <i>Loi sur les douanes</i> . Afin de favoriser les divulgations volontaires à l'égard des lois de l'ASFC, cette dernière encourage toutes les personnes et tous les importateurs commerciaux à corriger d'eux-mêmes tout manquement à leurs obligations de déclaration à l'Agence. Pour être considérée volontaire, une divulgation doit être effectuée dans l'esprit et l'intention des politiques, et, en outre, elle doit être effectuée avant qu'une vérification, une enquête ou toute autre mesure d'exécution ne soit mise en marche. Une divulgation est considérée volontaire avant que l'information soit vérifiée.
WARRANT	MANDAT
A written authority empowering a person to	Autorisation écrite donnant à une

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Glossary

do some act, particularly to execute an arrest or a search.	personne le pouvoir d'effectuer une action, particulièrement une arrestation ou une fouille.
WATCH FOR	AVIS DE SIGNALEMENT
This is a person, conveyance, or good that has been identified through the screening of available information as having indicators that require scrutiny.	Il s'agit d'une personne, d'un moyen de transport ou de marchandises qui ont été identifiés, grâce à l'examen des renseignements disponibles, comme disposant d'indicateurs qui nécessitent un examen plus approfondi.
WEAPON	ARME
See Firearms and weapons	Voir armes à feu et armes
YOUTH / YOUNG OFFENDER	ADOLESCENT / JEUNE CONTREVENANT
This refers to any person who is or in the absence of evidence to the contrary appears to be 12 years of age or more, but is under 18 years of age and is charged under the <i>Youth Criminal Justice Act</i> with having committed an offence while they were a young person or is found guilty of an offence under the <i>Youth Criminal Justice Act</i> .	Personne qui a ou qui paraît avoir, en l'absence d'une preuve contraire, 12 ans ou plus mais moins de 18 ans et qui est inculpée en vertu de la <i>Loi sur le système de justice pénale pour les adolescents</i> parce qu'elle a commis une infraction alors qu'elle était adolescente ou qui est déclarée coupable d'une infraction à cette loi.